

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 18-71748

4 Adv. Case No. 20-08051-ast

5 - - - - - x

6 In the Matter of:

7

8 ORION HEALTHCORP, INC.,

9

10 Debtor.

11 - - - - - x

12 HOWARD M. EHRENBURG IN HIS CAPACITY AS LIQUIDATING TRUSTEE

13 OF ORION HEALTHCORP, INC.,

14 Plaintiff,

15 v.

16 SARTISON, et al.,

17 Defendant.

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Page 2

1 United States Bankruptcy Court
2 290 Federal Plaza
3 Central Islip, New York 11722
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5 June 16, 2021
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21 B E F O R E :

22 HON ALAN S. TRUST

23 U.S. BANKRUPTCY JUDGE
24

25 ECRO: UNKNOWN

1 HEARING re 8-18-71748-ast Orion Healthcorp, Inc. [949]
2 Motion to Sell Property of the Estate Free and Clear of
3 Liens under 11 U.S.C 363(f) / Notice and Motion for Entry of
4 an Order Authorizing the Sale of Apartment 12J Located at 2
5 River Park Avenue, New York, N.Y. Free and Clear of Liens,
6 Claims, and Encumbrances and (II) Application for Entry of
7 an Order Authorizing and Approving Payment to the
8 Residential Board and of Sales Commission Upon Closing.
9 Filed by Jeffrey P Nolan on behalf of Howard M. Ehrenberg.

10
11 8-20-08051-ast Ehrenberg v. Elena Sartison et al
12 Status Conference

13
14 [1] Complaint by Howard M. Ehrenberg in his capacity as
15 Liquidating Trustee of Orion Healthcorp, Inc., et al against
16 Elena Sartison, 2 River Terrace Apartment 12J, LLC, Clodagh
17 Bowyer Greene a/k/a Clodagh Bowyer, Elliott Greene.

18 Nature(s) of Suit: (13 (Recovery of money/property - 548
19 fraudulent transfer)).

20
21 [83] Order to Schedule Trial and Establishing Deadlines of
22 the Liquidating Trustees Motion to Sell Property of the
23 Estate [main case dkt 949].

1 [86] (Motion for Determination of Final Order Awarding
2 Summary Judgment). Filed by Jeffrey P Nolan on behalf of
3 Howard M. Ehrenberg (related document(s) 42).

4
5 [84] Motion To Stay Order Pending Appeal. Filed by Maryam N
6 Hadden on behalf of 2 River Terrace Apartment 12J, LLC
7 (related document(s) 64, 83).

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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16 BY: MARYAM N. HADDEN

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18 ROSENBERG & PITTINSKY, LLP

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24

25 BY: LAURENCE D. PITTINSKY

1 ALSO PRESENT :

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3 WESLEY STANTON

4 HOWARD M. EHRENBURG

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P R O C E E D I N G S

CLERK: Okay, good afternoon. I'm Yvette Mills, courtroom deputy for Chief Judge Alan S. Trust presiding. These hearings are being recorded. Please speak clearly. All parties not speaking, please put your phone on mute.

We'll start with Case Number 18-71748, Orion Healthcorp, Inc. We also have -- well, do you want me to just leave that at that for now, Judge?

THE COURT: We'll take them together.

CLERK: Case Number 20-08051. Ehrenberg v. Elena Sartison, et al.

THE COURT: This is Judge Trust. We'll take appearance, please, first for the liquidating Trustee.

MR. SCHARF: Good morning, Your Honor -- or good afternoon, Your Honor. It's Ilan Scharf from Pachulski Stang Ziehl & Jones on behalf of the Trustee. We also have Jeffrey Nolan from my firm as counsel to the Trustee. The Trustee is on the line, as is another witness for the sale motion, Mr. Wesley Stanton.

THE COURT: All right. And who do we have for 2 River Terrace?

MS. HADDEN: Maryam Hadden, Parlatore Law Group. Good afternoon, Your Honor.

THE COURT: Any witnesses for 2 River Terrace?

MS. HADDEN: No, Your Honor. You'll just hear my

1 sterling arguments.

2 THE COURT: All right. Thank you both. All
3 right, so the Court's intention is, even though these are
4 not all necessarily evidentiary hearings, because of the
5 overlap, I'm going to take the sale motion of the main case
6 and the finality motion and the stay pending appeal motion
7 in the adversary proceeding altogether.

8 I want to start on the evidence, so we'll take the
9 witnesses for the Trustee first. Can we get -- did you want
10 to go with Mr. Stanton first or Mr. Ehrenberg?

11 MR. NOLAN: Your Honor, Jeff Nolan, appearing on
12 behalf of the Plaintiff. I think we would start with Mr.
13 Stanton first.

14 THE COURT: All right. Mr. Stanton, I can see
15 you, but please identify yourself so that you can become
16 center screen.

17 MR. STANTON: Sure. My name is Wesley Stanton.
18 I'm with the Stanton Hoch team at Compass Real Estate.

19 THE COURT: All right. All right, Mr. Nolan?

20 MR. NOLAN: Yes, Your Honor. So, we submitted in
21 support of the sale motion, the affidavit of Mr. Stanton
22 with certain exhibits. I do not believe there are any
23 objections to the exhibits to Mr. Stanton's affidavit. And
24 so if there is, I'd be more than happy to address those
25 issues, but I'd like to move his affidavit and the exhibits

1 into evidence.

2 THE COURT: Just for the record, give us that
3 docket number again of his affidavit.

4 MR. NOLAN: His affidavit is attached to Docket
5 Number 949, in the main case, 18-71748

6 THE COURT: All right. Ms. Hadden, is there any
7 objection to Mr. Stanton's declaration or supporting
8 documents?

9 MS. HADDEN: No objection to his declaration and
10 no objection to the brochure for the Compass Stanton Hoch
11 Group, which is attached. I believe there was also an
12 exhibit attached that was printouts of various real estate
13 advertisements. Although I apologize if I'm getting this
14 wrong, Mr. Nolan. That may not have been attached to Mr.
15 Stanton's affidavit. Is that one of the exhibits that
16 you're currently offering as well?

17 MR. NOLAN: So, that's a good question. So, no,
18 not with respect to the affidavit that's attached to the
19 sale motion. I was going to present the advertisement, Your
20 Honor, which are Exhibit 2 to the evidentiary hearing.
21 That's a separate exhibit.

22 MS. HADDEN: Okay, so just so that -- I just
23 wanted to be clear on that. I have no objection to either
24 the declaration of Mr. Stanton or to the brochure for his
25 group, which was attached.

1 THE COURT: All right. So, for benefit of the
2 record, Mr. Stanton's declaration and the exhibits of that
3 declaration, which are all part of Docket Item 949 in the
4 main case are admitted. We'll make those Exhibit 1 to this
5 hearing. So that's all admitted as Exhibit 1.

6 (Plaintiff's Exhibit 1 Entered into Evidence)

7 THE COURT: Mr. Nolan, do you want to address now
8 your Exhibit 2 and where it appears on the docket?

9 MR. NOLAN: Yes, Your Honor. So, for the ease of
10 the witnesses, I've put together the exhibit list, which is
11 Docket Number 90 in the adversary case, 20-08051.

12 THE COURT: Is the -- is the Exhibit 2, though, of
13 Mr. Stanton -- has that been filed on the docket or is that
14 a separate document?

15 MR. NOLAN: That should be attached to the exhibit
16 list, which is Docket 90, Your Honor.

17 THE COURT: In the adversary?

18 MR. NOLAN: Correct.

19 THE COURT: All right, give me one minute. All
20 right, so on Exhibit 90 in the adversary docket, 20-08051,
21 which of those exhibits are you offering through Mr.
22 Stanton?

23 MR. NOLAN: I will be offering, Your Honor,
24 Exhibits 1 and 2.

25 THE COURT: For identification purposes and to

1 keep the record clean, Docket Item 90 in the adversary
2 proceeding, what is marked as Exhibit 1 on that document
3 will actually be Exhibit 2 on this trial record. And those
4 are -- that's the brochure. Exhibit -- what is marked as
5 Exhibit 2, various advertisements, that would be Exhibit 3
6 for the trial record. Ms. Hadden, is there any objection to
7 the admission of Exhibits 2 or 3?

8 MS. HADDEN: No objection as to the admission of
9 Exhibit 2, which is substantially the same as part of
10 Exhibit 1. As to Exhibit 3, which is the advertisements, I
11 do have an objection in that although they do appear to be
12 essentially screenshots of webpages, some of those webpages
13 have tabs which are not expanded, so they're not complete
14 screenshots and they're also not screenshots that were taken
15 at the time that the listing was active. They were all
16 taken after the listing had been at least somewhat
17 deactivated due to the property being under contract. So, I
18 would object to those going into evidence.

19 (Plaintiff's Exhibit 2 Admitted into Evidence)

20 THE COURT: All right. I'll let Mr. Nolan -- I'll
21 let you make any foundation of Exhibit 3 through Mr. Stanton
22 before he would go to cross.

23 MR. NOLAN: Okay, Your Honor, thank you. And then
24 just for one more piece of housekeeping, Exhibit 3 to Docket
25 90, which is the contract of sale for the condominium unit,

1 that can either come in through -- that was attached to Mr.
2 Stanton's affidavit as a true and correct copy of the
3 contract for sale, and I would submit that that -- I'm going
4 to ask, you know, both witnesses, but I would submit that it
5 can be -- you know, is a true and correct copy and should be
6 moved into evidence.

7 THE COURT: All right, so then Exhibit -- contract
8 of sale for the condominium unit will be marked as Exhibit 4
9 to this trial record. Ms. Hadden, any objection to Exhibit
10 4, the contract of sale?

11 MS. HADDEN: So long as Mr. Stanton testifies
12 consistently with Mr. Nolan's representation that it's a
13 true and accurate copy, which I assume he will, I have no
14 objection.

15 THE COURT: All right. All right, so then subject
16 to that foundation, Exhibit 4 is admitted.

17 (Plaintiff's Exhibit 4 Admitted into Evidence)

18 THE COURT: Any other exhibits offered to Mr.
19 Stanton?

20 MR. NOLAN: No, Your Honor.

21 THE COURT: All right. Mr. Stanton?

22 MR. STANTON: Yes, Your Honor.

23 THE COURT: Are you familiar with the affidavit
24 that bears your name which has been filed --

25 MR. STANTON: Yes.

1 THE COURT: -- in this -- in the main bankruptcy
2 case?

3 MR. STANTON: Yes, I am.

4 THE COURT: All right. And is the information
5 contained within your affidavit true and correct, to the
6 best of your knowledge?

7 MR. STANTON: To the best of my knowledge, yes.

8 THE COURT: All right. I'm actually going to have
9 you raise your right hand do to be sworn in. I'm two
10 questions beyond the swearing you in part. So, do you swear
11 or affirm that the testimony you're about to give will be
12 true and correct, to the best of your knowledge and belief?

13 MR. STANTON: Yes.

14 THE COURT: And so let me just have you repeat --
15 the affidavit -- you can lower your... The affidavit that
16 you've executed, the information contained in that affidavit
17 is true ad correct, to the best of your knowledge and
18 belief?

19 MR. STANTON: Yes, to the best of my knowledge,
20 yes.

21 THE COURT: All right. So, then Mr. Stanton's
22 declaration will stand as his direct testimony. Mr. Nolan,
23 if you just want to briefly cover foundation on the
24 advertisements?

25 MR. NOLAN: Yes, Your Honor. Your Honor, is there

1 any objection to the expertise of Mr. Stanton? If there is,
2 I can go ahead and lay a foundation.

3 THE COURT: I think his affidavit sets out his
4 expertise, knowledge in the sale of units of this type.
5 I'll let Ms. Hadden challenge that if she wishes to on
6 cross, in terms of weight.

7 MR. NOLAN: Okay, thank you, Your Honor. Let me
8 take a step back.

9 DIRECT EXAMINATION OF WESLEY STANTON

10 BY MR. NOLAN:

11 Q Mr. Stanton, good afternoon. Can you tell me what your
12 occupation is?

13 A I'm a real estate agent in Manhattan and Brooklyn.

14 Q And how long have --

15 THE COURT: Mr. Nolan, you don't need to go back
16 through everything that's already in his declaration. All
17 of that constitutes not his direct testimony.

18 MR. NOLAN: Okay, thank you, Your Honor.

19 THE COURT: Unless it's directly pertinent to the
20 foundation to the advertisements, it's already in the
21 record.

22 MR. NOLAN: Okay, thank you, Your Honor. And for
23 the ease of the record, when I -- I'm going to reference the
24 property, and when I'm doing that, I'm referencing the
25 condominium at 2 River Terrace, Apartment 12J.

1 BY MR. NOLAN:

2 Q Mr. Stanton, did you, as part of your duties as the
3 sales agent to market and sell the property, did you
4 advertise the property?

5 A Yes.

6 Q And across what mediums did you advertise the property?

7 A The property was put into the brokers database, which
8 syndicates to all the real estate Board of New York brokers.
9 It was on, as I understand, over 90 domestic websites and 70
10 international websites. We used our contacts within the
11 industry. Brokers that we knew were active in the area in
12 the building. It was on Compass.com through what's called
13 the Virtual Office Network. It was also listed on various
14 other brokerage companies' websites throughout the
15 (indiscernible) network.

16 Q Thank you. And besides the old school way of
17 advertising across with other brokers, do you also advertise
18 across the, you know, internet and electronic or other type
19 of advertising for the property?

20 A Yes, many of the -- all of those websites are very
21 client-focused like Zillow and StreetEasy and Trulia, Wall
22 Street Journal, so on and so forth. Those are directed
23 marketed to buyers, whereas the brokerage database is really
24 more towards the brokers.

25 Q Thank you. And if you would look at Exhibit 3, which

1 is Exhibit 2 in the binder in front of you, which are
2 various internet or intellectual -- you know, various types
3 of mediums to advertise the property. Can you just briefly
4 describe what those are to the Court?

5 A So, these are the listings that were put up advertising
6 the property. They -- the first one is Realtor.com, but
7 there are several others that we -- we put online for the
8 benefit of any buyer that would be interested in buying the
9 property.

10 When the property -- when it's a contract, we
11 uploaded it into contract, but it was, I think, listed on
12 April 3rd and it didn't go to contract until April 23rd.
13 so, it was openly marketed during that time. And then,
14 obviously, I was using some of my personal connections prior
15 to that time.

16 Q And do you have any ability to tell the Court whether
17 or not advertising across these different entities, such as
18 Realtor.com or Zillow, resulted in any type of interest in
19 the property?

20 A We got -- we got several inquiries on the property.

21 Q In your projection -- in custom and practice as a real
22 estate agent, is it normal to advertise across these type of
23 mediums like Compass.com, Zillow and Realtor.com?

24 A Yes.

25 Q Can you please tell me whether or not, looking at

1 Exhibit 3, which are the advertisements -- those are true
2 and correct copies of advertisements for the property in
3 question?

4 A Yes.

5 Q And how do you know that?

6 A Because I'm the one that put them up. And I provided
7 them to you.

8 MR. NOLAN: Your Honor, I'd like to move the
9 Exhibit 3, which are the advertisements, into evidence.

10 THE COURT: Ms. Hadden, any objections?

11 MS. HADDEN: May I have a brief voir dire, Your
12 Honor?

13 THE COURT: All right.

14 MS. HADDEN: Thank you.

15 VOIR DIRE OF WESLEY STANTON

16 BY MS. HADDEN:

17 Q Good afternoon, Mr. Stanton.

18 A Hi, how are you?

19 Q Good. How are you? If there's anything that I ask you
20 that you don't understand, please just let me know and I'll
21 rephrase it, all right?

22 A Of course. Thank you.

23 Q Thank you. Now, you said that you recognized these
24 advertisements which are contained in Exhibit 2 in front of
25 you and Exhibit 3 as renumbered by the Court. You said you

1 recognized them because you had put them up. Now, as a real
2 estate broker, do you have access to put information onto
3 the third party sites such as Zillow or Redfin or any of the
4 other sites? Or is it something where you send out a
5 uniform listing and then that listing is uploaded and
6 adapted?

7 A It -- well, at Compass it works at both. There are
8 certain things that are just syndicated. For example, the -
9 - in the instance of StreetEasy or Zillow, we need to put it
10 in directly.

11 Q And are there other third party agencies where they
12 take that information and then they themselves add it to
13 their site?

14 A I don't know for sure. I would think so, yes, as we
15 syndicate to 90 domestic sites and over 70 international
16 sites. I'm not sure how it gets to those sites but it gets
17 there.

18 Q And the sites that are contained in that exhibit in
19 front of you or that you've had a chance to review, are
20 those all sites where you yourself were involved in
21 uploading that information, or some of the sites where you
22 uploaded it and other sites where -- through whatever
23 process that is, they obtained the information and then
24 published them?

25 A Well, my -- my assistant is the one that specifically

1 uploaded it to the sites. I'm not sure how specifically she
2 does that because that's her job, but some would have gone
3 through just uploading it into the Compass system and then
4 it automatically syndicates, and some are directly inputted
5 by my assistants.

6 Q And looking at those pages that are in front of you,
7 those specific pages that are being offered into evidence,
8 are you able to tell how each of those pages was put onto
9 that site?

10 A I could find out that information but I don't have that
11 information right now.

12 Q And just for clarity, some of the pages that are
13 contained in that exhibit list the property as being under
14 contract, which, of course, it is. Is there any difference
15 in the, so to speak -- for a listing, for a property that is
16 under contract as opposed to a listing for a property that
17 is simply on the open market and nothing is pending at that
18 point?

19 A The difference would be the status, obviously. It's
20 still actively marketed. It's still online as an in-
21 contract-listed, until it -- closes.

22 Q Okay. I apologize, I didn't mean to cut you off.

23 A Okay.

24 Q All right.

25 MS. HADDEN: Those are my only questions as to

1 that exhibit. Thank you, Your Honor. I do still have an
2 objection as to the... Oh, actually, one other question. I
3 apologize.

4 BY MS. HADDEN:

5 Q Is it correct that some of these sites have dropdown
6 menus, so to speak. Where if you're looking at a listing
7 initially, it will give you -- here's information about the
8 property, and then you have a link where you can click to
9 see more, for example, or click to see comparative home
10 values, things along those lines?

11 A Every -- every property -- every site is different.
12 For example, if you're on Zillow, depending on where you are
13 on Zillow, there are dropdown menus that would allow you to
14 expand upon the description. But it's not a -- but
15 everything is readily available for someone to see. That's
16 just the way of -- the way things are advertised.

17 Q And looking again at those specific pages in front of
18 you -- because, obviously, there's a difference between the
19 printed copy and the online access, to so speak, are the
20 pages in front of you pages where each of those dropdown
21 menus where they exist have been expanded, or are some of
22 those still just tabs that have not been opened?

23 A Well, so if we went to the Realtor.com advertisement --
24 I think this is what you're asking me -- if you went to the
25 Realtor.com advertisement and looked at it online, you could

1 expand all of these areas. These property details, so on
2 and so forth, to rad more about the -- about the property.

3 Q All right. So, the items that are in front of you,
4 Exhibit Number 3, that's not the expanded version for each
5 of these websites -- it's a minimized, for lack of a better
6 term, version, is that correct?

7 A It's the printed version but you could expand it
8 online. I'm sure there's a way to print it and expand it on
9 paper but, again, I'm not sure because I don't regularly
10 print these. You know, we generally get the inquiries after
11 people have already perused them.

12 Q All right, thank you.

13 MS. HADDEN: Your Honor, I do still have the same
14 objection.

15 THE COURT: All right, the objection is overruled.
16 Exhibit 3 on this trial record is admitted. For optional
17 completeness purposes, which seems to be what the objection
18 is going to -- or functional completeness, as some call it -
19 - if the objecting party wanted to offer the portions of the
20 information in the dropdown portions of the webpages that
21 are not part of this record, then they could do so for
22 optional completeness purposes. But the document itself is
23 admitted. The pages are essentially repeats of the same
24 information website to website. So Exhibit 3 is admitted.

25 (Plaintiff's Exhibit 3 Admitted into Evidence)

1 Mr. Nolan, anything further for Mr. Stanton in
2 your direct case?

3 MR. NOLAN: No, Your Honor.

4 THE COURT: So then, continuing where you were,
5 Ms. Hadden, on cross if you want to go into the main cross-
6 examination?

7 MS. HADDEN: Thank you, Your Honor.

8 CROSS-EXAMINATION OF WESLEY STANTON

9 BY MS. HADDEN:

10 Q Mr. Stanton, previously to working at Compass, you
11 worked at Douglas Elliman, correct?

12 A Correct.

13 Q And as a member of Douglas Elliman as well as a real
14 estate agent who specializes in the higher level properties
15 in Manhattan, I assume you were familiar with 2 River
16 Terrace before becoming involved in this case. Is that
17 accurate?

18 A Yes.

19 Q Had you marketed properties at 2 River Terrace before
20 this?

21 A No.

22 Q So, you were not involved in the purchase of the
23 apartment in question back in 2016, is that correct?

24 A (indiscernible)

25 Q But you were working at Douglas Elliman at that time?

1 A In 2016, yes, I was at Douglas Elliman.

2 Q All right. Now, correct me if I'm wrong, but you were
3 the one in consultation with the Trustee who determined at
4 what price point the apartment should be marketed, is that
5 correct?

6 A Yes.

7 Q Could you tell us more about how you arrived at that
8 determination of what the price for the apartment should be?

9 MR. NOLAN: Objection to the form of the question.
10 It's over-broad and ambiguous and calls for a narrative.
11 But if the Court wants to give the witness that latitude,
12 I'll withdraw the objection.

13 THE COURT: The Court will allow him to testify as
14 to how he and the Trustee determined the price at which to
15 offer the condo (indiscernible) property -- but try to keep
16 it succinct.

17 BY MS. HADDEN:

18 A We looked at comps, you know, in the area for Battery
19 Park City and within the building. And from there, we
20 derived a range at what we thought it would sell for.

21 Q And you marketed it at 5.25, is that right?

22 A Correct.

23 Q Now, 5.25 is lower than the price it had sold at in
24 2016, correct?

25 A Yes.

1 Q What was the reason for marketing at a lower price
2 point?

3 A The market had fallen.

4 Q And has the market fallen, in your experience,
5 throughout New York City or more in the Battery Park area?

6 A Generally, throughout New York City but, specifically,
7 in the Battery Park area.

8 Q So, for example, you have a property listed on the
9 Upper West Side at a higher price point, correct?

10 A Correct.

11 Q 375 West End Avenue listed at 6.250?

12 A Correct.

13 Q And that apartment does not have a river view, correct?

14 A Correct.

15 Q Whereas Apartment 12JK has a river view from both the
16 bedroom and the living room/kitchen area, is that right?

17 A Correct.

18 Q What would be the differences in the price points
19 between those two apartments, again, in your expertise as a
20 real estate agent?

21 A It would be the same thing as saying -- comparing an
22 apartment in New York City to New Jersey. Two totally
23 different locations. They're not comparable whatsoever.

24 Q So, the West End is completely different from Battery
25 Park even though they're in the same city, is that correct?

1 A Yes. Also less than -- happens to be a completely gut-
2 renovated \$2 million renovation in a penthouse apartment
3 that's on the Upper West Side, which is a completely
4 different location. It has every bell and whistle from a
5 renovated perspective that one could want. It's also five
6 bedrooms, not three. I mean, I could go on, if you want,
7 but it's apples and oranges from a real estate perspective.

8 Q I would actually like to focus in on something you just
9 said. All the bells and whistles you mentioned. What are
10 the bells and whistles that were missing, so to speak, from
11 Apartment 12JK?

12 A Well, it's got a lot of wear and tear on it. You know,
13 most buyers would consider the apartment needing work.

14 Q What type of work did it need?

15 A There were some issues in the kitchen with the kitchen
16 cabinetry, there was wear and tear on the floors, there were
17 issues with the walls, the bathrooms were not brand new.
18 Most buyers would want to renovate this to bring it up to --
19 up to the times.

20 Q When you say issues in the kitchen, there are a couple
21 of handles that had been removed?

22 A Hardware missing, there's scratches in the -- in the
23 cabinetry. It's just not a brand new apartment.

24 Q Right. So, in your viewpoint, the fact that the --

25 A (indiscernible) -- it just is what -- it's a fact.

1 Q In your viewpoint, the fact that the apartment is not -
2 - you know, has not come straight off the line, so to speak,
3 in other words, it does have some evidence that some
4 individual has lived in it over the past few years, is what
5 brings it from, say, the \$6 million range down to the low \$5
6 million range, is that accurate?

7 MR. SCHARF?: Your Honor, objection as to Mr.
8 Stanton -- to Mr. Stanton opining on whether anybody has
9 lived there in the past few years.

10 THE COURT: So, invoking the one riot, one ranger
11 rule, this is Mr. Nolan's witness so any objections would
12 have to be from Mr. Nolan. I heard her question so I'm not
13 taking it as him saying somebody was there 13 out of the
14 last 21 days -- more to the age of the unit. But Ms. Hadden
15 specifically asked the witness if he -- if he's aware of --
16 if, as, and when someone resided in the apartment over the
17 last -- unit over the last 12, 18, 24 months, you're
18 certainly free to ask him that.

19 MS. HADDEN: No, Your Honor is quite correct. The
20 focus of my question was not whether or not someone has been
21 there in February of 2021, for example. It's more a
22 question of is it the age/wear and tear of some of the items
23 within the apartment that's driving your focus in terms of
24 the price point of the apartment? Is that an accurate
25 representation of your testimony?

1 MR. NOLAN?: I'll object to the form of the
2 question. It's an incomplete hypothetical and it
3 mischaracterizes the witness's testimony.

4 THE COURT: Do you want to rephrase it, Mr.
5 Hadden?

6 MS. HADDEN: Sure.

7 BY MS. HADDEN:

8 Q Is it accurate to say, Mr. Stanton, that your testimony
9 is that the apartment has sufficient wear and tear to bring
10 it below the price point that you would have suggested
11 marketing that were it in pristine, untouched condition?

12 A Yes.

13 Q Assume for a moment the apartment was in pristine,
14 untouched condition. What then would you recommend -- or
15 what would your professional opinion be as to the
16 appropriate price point for the apartment?

17 A I couldn't answer that question. I would have to see
18 the renovation when it was done.

19 Q So, is it -- if I'm understanding correctly, you're
20 saying that the materials in the apartment -- for example,
21 the décor in the kitchen -- you mentioned the kitchen as
22 being an area of concern. Are you saying that it's outdated
23 and that's why you're unable to make an estimation? Or --

24 A The apartment was built in 2007, which is 14 years ago.
25 14 years is a long time for a renovation to hold,

1 particularly when there's -- it appears to me that whoever
2 was living there did not take complete care of it.

3 Q Okay.

4 A But to say that it's the only reason that affected a
5 price versus the Upper West Side apartment that you're
6 referencing is not accurate.

7 Q Okay. What are other things that affected the price,
8 other than the wear and tear that you've mentioned?

9 A The building is a land-lease building, which is a
10 stigma in the industry, which knocks out a significant
11 portion of buyers. The building is in Battery Park, which
12 is a niche location, which knocks out another significant
13 amount of buyers. And we're also still dealing with the
14 effects of a pandemic.

15 Q And you listed the property I believe on -- I believe
16 it was April 2nd, although you may have testified April 3rd.
17 But either April 2nd or April 3rd. And you were in contract
18 as of April 23rd, is that right?

19 A Yes.

20 Q Again, in your experience as a real estate agent
21 specializing in this area, is that a lengthy amount of time
22 for a property to be on the market, a reasonable amount of
23 time, or a short amount of time?

24 A I wouldn't characterize it as anything. It depends on
25 -- I wouldn't characterize it as any of them.

1 Q How would you characterize it?

2 A I would say that we got the best value for it,
3 regardless of time. Typically, apartments that sell quickly
4 get the highest value because they're priced well.

5 Q And my question for you is, is this an apartment that
6 sold quickly in your experience or not quickly in your
7 experience?

8 MR. NOLAN: I'll object to the question. It's
9 been asked and answered.

10 THE COURT: I'll allow it. Sustained.

11 BY MS. HADDEN:

12 A I -- what are we comparing this to? Every marketing --
13 every marketing is its own. Every apartment is its own...
14 I don't know how to answer that question.

15 Q So --

16 A There are apartments --

17 Q How many offers -- how many offers did you receive --

18 A There are apartments that sell in one day. There are
19 apartments that sell in six months. There's apartments that
20 sell in a couple weeks. I don't -- it really just -- it
21 depends on too many factors to give you a definitive answer.

22 Q All right. So, am I correct then that there's no
23 industry standard by which you can say any kind of a
24 benchmark as to whether or not this apartment sold quickly?

25 A I'm sorry, I didn't hear the question. You...

1 Q I apologize. I'll repeat it. Am I understanding then
2 correctly that there is no standard by which you could say
3 an apartment has been on the market for a long period of
4 time or a brief period of time because each situation, as
5 you say, is completely --

6 A I -- I'm sorry, it keeps freezing up.

7 Q All right.

8 A Can you repeat it? I apologize. It might be on my
9 end, although it was fine before, so I was a little confused
10 on...

11 Q Yeah, I haven't gone anywhere either so -- it's the joy
12 of technology. I'll try again. Am I understanding
13 correctly from your testimony that there is no standard
14 within your experience, or industry standard within your
15 experience, by which you could benchmark whether an
16 apartment is moving quickly or slowly in terms of a sale?

17 A I think that if an apartment sells within 30 days, the
18 marketing did its job. That's how I can -- I can clarify
19 that. Although I would say every seller has their
20 difference of opinion, is something selling quickly or not.

21 Q I'm sure that's the case. As to this particular
22 apartment, I believe you said that you had received more
23 than one offer, is that correct?

24 A That is correct.

25 Q How many offers in total did the Trustee receive?

1 A Two.

2 Q So, it's the \$4.8 million offer that was accepted, and
3 I believe the other offer was \$4.7 million, is that correct?

4 A Correct.

5 Q And you said that there was a financing contingency on
6 the other offer. What was the financing contingency?

7 A It was a 45-day financing contingency. I believe they
8 were financing 80 percent, which was the maximum amount of
9 reasonable financing that most -- that is standard in New
10 York.

11 Q And the \$4.8 million offer is an all-cash offer?

12 A Correct.

13 Q And that's from an agent who specializes in the
14 building?

15 A Correct.

16 Q Or represented by an agent who specializes in the
17 building? Have you worked with him before?

18 A I have not. I know him but I have not -- I don't
19 believe that we've done a deal together, no.

20 Q And you don't know anything about the buyer themselves,
21 correct?

22 A No.

23 MS. HADDEN: I have no other questions for Mr.
24 Stanton, thank you.

25 THE COURT: Any redirect?

1 MR. NOLAN: Yes, just briefly, Your Honor.

2 REDIRECT EXAMINATION OF WESLEY STANTON

3 BY MR. NOLAN:

4 Q Is it a fair statement, Mr. Stanton, that your goal was
5 to get the highest and best price for the property?

6 A Yes.

7 Q Did you inspect the property at the time you took the
8 listing?

9 A Yes.

10 Q Did you have a chance to walk through and inspect each
11 of the rooms?

12 A Yes.

13 Q And you had a chance to do research on the comps for
14 the building and the surrounding area?

15 A Yes.

16 Q And your determination to market the property was based
17 upon your perception and your expertise in the industry?

18 A Yes.

19 Q And do you believe that the \$4.8 million all-cash offer
20 is the fair market value price for this property as of April
21 2021?

22 A Yes.

23 Q And one last question. Have you seen sales with
24 respect to auctions?

25 A I have, yes.

1 Q And --

2 MS. HADDEN: I'm just going to object as being
3 beyond the scope at this point, Your Honor.

4 THE COURT: That would be beyond the scope.

5 MR. NOLAN: I'll withdraw the question. No
6 further questions, Your Honor.

7 THE COURT: All right, very well. Thank you. Mr.
8 Stanton, you're free to leave the hearing if you wish.
9 You're certainly welcome to stay.

10 THE WITNESS: Thank you, all. I appreciate it.
11 Have a good day. Bye. Thank you.

12 THE COURT: I take that was option one. All
13 right. So then we'll hear from Mr. Ehrenberg? Sir, would
14 you identify yourself, please, so you'll become center
15 screen?

16 MR. EHRENBURG: Good afternoon, Your Honor. I'm
17 Howard Ehrenberg, the Liquidating Trustee for Orion
18 Healthcorp.

19 THE COURT: All right. Mr. Ehrenberg, I will --
20 are you also an attorney, is that correct?

21 MR. EHRENBURG: I am.

22 THE COURT: A practicing attorney?

23 MR. EHRENBURG: Yes, in California.

24 THE COURT: All right, so I'll waive the oath for
25 you as an officer of the Court. All right, then, Mr. Nolan,

1 do you have Mr. Ehrenberg's declaration? It's at Docket
2 Item 966. The Court would make that declaration Exhibit 5
3 for this record.

4 MR. EHRENBURG: It was an objection to an invoice
5 from Douglas Elliman. It's referenced in the declaration.
6 It's Exhibit 1 to the declaration. I think it's also
7 contained in Mr. Stanton's affidavit. But, that aside,
8 because of the objection -- Mr. Nolan, Mr. Scharf, whoever
9 is taking the witness, if you want to establish any more
10 foundation for that document I'll let you do so before
11 ruling on that objection.

12 MR. NOLAN: Thank you, Your Honor.

13 DIRECT EXAMINATION OF HOWARD M. EHRENBURG

14 BY MR. NOLAN:

15 Q Mr. Ehrenberg, I'm going to refer you to Docket Number
16 90, which is the Plaintiff's -- the Trustee's exhibits for
17 the sale motion. It's Exhibit 5.

18 And I would ask the -- and it's identified for the
19 record, Your Honor, as Douglas Elliman Property Management
20 Invoices.

21 MS. HADDEN: And just for clarity sake, I think
22 there was a single page of what is Exhibit 5 in Docket
23 Number 90 in the adversary proceeding that was submitted as
24 an exhibit to Mr. Ehrenberg's declaration, I believe, in the
25 main proceeding. I think it may have been Docket Number

1 967.

2 THE COURT: Well, we have two different things, I
3 think. There was a single page exhibit to Mr. Ehrenberg's
4 original declaration, which is a one-page invoice on a
5 Douglas Elliman form, and that is at Docket 967. And now on
6 Docket 90 in the adversary proceeding, as Exhibit 5, there
7 are multiple invoices?

8 MR. NOLAN: Correct.

9 THE COURT: Does the one-page -- is the one page
10 that Ms. Hadden objected to part of the multiple pages in
11 Exhibit -- what was marked -- what was called Exhibit 5 in
12 the adversary listed exhibits?

13 MR. NOLAN: Yes, Your Honor. And I propose that I
14 just keep them -- since it's repetitive, it's duplicative of
15 what's in Exhibit 5 to Docket 90, I'll just lay a foundation
16 and keep them altogether and make it easy for housekeeping
17 matters.

18 THE COURT: All right, that'll be great. Thanks,
19 Mr. Nolan. So, for record identification purposes, several
20 pages of invoices, interactions, sub-marked Docket Item 90-5
21 in Adversary Proceeding 20-8051 are all Exhibit 6 to this
22 trial record. If you want to now -- if you're offering
23 those exhibits, is there an objection to those, Ms. Hadden?

24 MS. HADDEN: I'd have the same objection to those,
25 Your Honor, just as a group -- that I add to the single

1 page.

2 THE COURT: So if you want to lay a foundation for
3 those, what is now Exhibit 6 to this trial record is not yet
4 admitted. So, Mr. Nolan?

5 MR. NOLAN: Thank you, Your Honor.

6 BY MR. NOLAN:

7 Q Mr. Ehrenberg, looking at the Douglas Elliman Property
8 Management invoices -- and for the record, I'm going to
9 identify them as they're dated, March, April, May and June -
10 - do you recognize those documents?

11 A Yes.

12 Q And what do they represent to you?

13 A Those are the invoices from the Homeowners Association
14 for the monthly charges and related expenses.

15 Q And did you receive those -- those documents as the
16 Trustee in this case?

17 A I did.

18 Q And what did you do with them?

19 A I reviewed them and then paid them for the current
20 charges, not the charges prior to my taking possession.

21 Q Okay. And these invoices, are these invoices with
22 respect to the property that is the subject of the hearing
23 today?

24 A Yes.

25 Q And do you have an understanding of what these charges

1 are for for each respective month?

2 A Yes.

3 Q And what is that?

4 A One charge is the HOA fee itself for the expenses of
5 the association. Another that's called Pilot is actually
6 the share of property taxes owed for this unit. And then in
7 later months, there is also some assessments that were
8 issued by the homeowners that were paid currently. And then
9 there is some shared utility expenses.

10 Q Thank you.

11 MR. NOLAN: Your Honor, I'd like to move Exhibit 6
12 into evidence.

13 THE COURT: All right. I'll take it that the same
14 objection still stands as to foundation. But the objection
15 would be overruled. These are invoices that would have
16 arisen after the Court's judgment -- (indiscernible) title
17 to the property and the Trustee. At that vantage point the
18 Trustee is nominally the owner of the property and is
19 receiving bills and paying bills as owner. So that
20 objection would be overruled.

21 In addition, the Court does not find that there's
22 any significant issue about the trustworthiness or
23 credibility of these exhibits. So, the group of invoices in
24 Exhibit 6 are admitted.

25 (Plaintiff's Exhibit 6 Admitted into Evidence)

1 THE COURT: Any other exhibits through Mr.
2 Ehrenberg?

3 MR. NOLAN: Yes, Your Honor. On Docket 90,
4 Exhibit 4, which is the New York County -- New York State
5 County Clerk judgment. I don't know if there's an objection
6 to this document or not. It's been the subject of other
7 litigation. It was utilized without objection on Docket 55
8 in the adversary as part of the summary judgment motion. It
9 was Separate Statement of Fact 19, which was not disputed.
10 But I'm more than happy to utilize this witness to identify
11 and to lay a foundation for the judgment.

12 MS. HADDEN: That's a Court record, Your Honor. I
13 have no objection to that exhibit.

14 THE COURT: All right, so for identification
15 purposes, this is now Exhibit 7. For this trial record,
16 it's the document sub-marked as Docket 90-4 in Adversary 20-
17 8051. It is admitted as Exhibit 7.

18 (Plaintiff's Exhibit 7 Admitted into Evidence)

19 MR. NOLAN: Thank you, Your Honor.

20 BY MR. NOLAN:

21 Q Mr. Ehrenberg, are you aware if there is a -- as the
22 owner, if there is a lien on the property?

23 A Yes.

24 Q And the lien -- what lien -- what do you understand the
25 lien to be for?

1 A It's for the judgment and the subsequently unpaid HOA
2 fees.

3 Q And do you -- do you actually know or can give us an
4 approximation as to what the dollar amount that's alleged to
5 be a lien against the property?

6 A If I recall, I think it's about \$460,000, maybe more.
7 \$470,000?

8 Q Yeah, and that lien exists and is... Strike that.
9 With respect to that lien that's against the property, are
10 you aware of whether or not anyone has attempted to
11 foreclose or -- or sell the property?

12 A Yes.

13 Q And what's your -- what's your understanding has
14 been... Or strike that. That lien would seek to undermine
15 any attempt of the Trustee to sell the property. Is that a
16 fair statement?

17 A Yes.

18 Q And are you aware of whether or not the property was
19 subject to a sheriff's sale?

20 A I believe that it was.

21 Q And did the issue of a pending sheriff's sale have any
22 impact on you with respect to your decision of whether or
23 not to try and sell or liquidate the property?

24 A Yes, it did.

25 Q All right. Thank you.

1 MR. NOLAN: I have no further questions, Your
2 Honor.

3 THE COURT: All right, very well. Ms. Hadden?

4 MS. HADDEN: Thank you, Your Honor.

5 CROSS-EXAMINATION OF HOWARD M. EHRENBURG

6 BY MS. HADDEN:

7 Q Good afternoon, Mr. Ehrenberg.

8 A It's still good morning for me, but --

9 Q Oh, that's right. Good morning.

10 A Same to you.

11 Q Thank you. So, I have a couple of quick questions for
12 you -- or hopefully quick questions for you. You took
13 possession of the property as of March 1st, pursuant to the
14 Court's order, is that correct?

15 A That's correct.

16 Q But you retained Compass on February 10th, is that
17 right?

18 A About that date, yes.

19 Q And around that same date, you had the locks changed on
20 the apartment, is that correct? Not you personally but --

21 A Yes, I had them changed, yes.

22 Q Okay. And --

23 A To protect the assets inside.

24 Q Okay. I didn't mean to cut you off. I'm sorry if I
25 did.

1 A No, no.

2 Q What were you protecting the assets inside from?

3 A I wanted to make sure that nothing happened to the
4 apartment when it was in my possession.

5 Q But it was not yet in your possession at that point, is
6 that right?

7 MR. NOLAN: I'll object to the question to the
8 extent it calls for a legal conclusion.

9 THE COURT: All right. Even though you are a
10 lawyer, you're not testifying as a legal expert. Just a
11 business reason for securing your (indiscernible) as of on
12 or about February 10, 2020?

13 THE WITNESS: That's right. Subsequent to the
14 Court's order awarding the property to the bankruptcy
15 estate, I changed the locks, as I typically do.

16 BY MS. HADDEN:

17 Q And at that time, the lien from the board pursuant to
18 that State Court judgment was still in effect, correct?

19 A Yes.

20 Q (indiscernible) And as well, the order of the
21 Bankruptcy Court, Judge Trust, that had secured a number of
22 assets associated with different Parmar entities, including
23 this apartment, was still acting as a lien against that
24 apartment? Had it been -- was it still in place at that
25 time?

1 MR. NOLAN: I'll object to the question as it
2 lacks foundation, Your Honor.

3 THE COURT: Would you rephrase the question, Ms.
4 Hadden?

5 MS. HADDEN: Certainly.

6 BY MS. HADDEN:

7 Q Mr. Ehrenberg, you've been appointed the Liquidating
8 Trustee in the overall bankruptcy in this case for quite
9 some time now, correct?

10 A Yes, a little over two years.

11 Q All right. And in that capacity, were you aware that,
12 among the other multiple proceedings that have gone on,
13 there was an order from Judge Trust that secured or sought
14 to secure a number of assets, in particular, real estate
15 assets that were associated either with Mr. Parmar or with
16 entities associated with Mr. Parmar?

17 A Yes. Some of them are also subject to his criminal
18 case.

19 Q Yes.

20 A And are under the control of the U.S. Attorney's
21 Office.

22 Q And that was the case with this apartment as well up
23 until May 12th, is that correct?

24 A That's correct.

25 Q That's May 12th -- for clarity, May 12, 2021, this

1 year?

2 A Yes. We knew of it, I believe, earlier than that but,
3 yes, we knew that they were not going to claim it in their
4 action.

5 Q Okay. So, you had -- for lack of a better term,
6 advanced notice that they were going to be abandoning it
7 from the criminal case?

8 A Yes.

9 Q Okay. Do you recall when you learned that?

10 A Not precisely. It was not long before.

11 Q Do you recall if it was before or after February 10,
12 2021?

13 A My best recollection is it would've been before but I'd
14 have to review my notes.

15 Q I understand. And I believe in your declaration you
16 testified -- and I'm using testified in that your
17 declaration qualifies as part of your direct examination --
18 that you'd received multiple offers for the apartment. By
19 multiple offers, that was the two offers that Mr. Stanton
20 discussed or were there other offers in addition to that?

21 A There were no others that I'm aware of.

22 Q All right, so it was the offer that was eventually
23 accepted and gone into contract, and the \$4.6 million with
24 the financing contingency, is that right?

25 A Yes.

1 Q Do you recall how close to the time that the apartment
2 was listed those offers were first received? In other
3 words, was there a period of negotiation back and forth or
4 were the offers received and then you went into contract
5 almost immediately thereafter?

6 A My recollection is that Mr. Stanton told me that he was
7 aware that there were potential buyers who were already
8 familiar with this building, and upon being told of its
9 availability might be willing to make an offer. So, I
10 believe that there was not a great deal of time between when
11 the listing went live and when we were made aware of the
12 potential buyer.

13 Q Okay. So, this was not necessarily just someone paging
14 through the internet, but perhaps at least someone who had
15 come through that awareness in the building itself?

16 A I believe so. I think Mr. Stanton testified that he
17 knew the broker who represented the buyer. So, I'm not sure
18 exactly what the mode of contact was but yes.

19 Q I understand, okay. Thank you. Now... I apologize.
20 You initially listed the property for 5.25 million, is that
21 right?

22 A Yes.

23 Q And we've already heard Mr. Stanton's perspective on
24 why that was the appropriate price point. What was your
25 perspective as the seller as to why that was the appropriate

1 price point?

2 A I think strategically we were trying to place it a
3 little bit higher than what he thought it was likely to go
4 for on the somewhat hope that there would be a buyer willing
5 to pay a little more than what he believed the likely sale
6 price to be. So, I agreed to price it at that figure. But
7 with an internal understanding that it was more likely to go
8 for a somewhat lower price -- which turns out to be exactly
9 what happened.

10 Q So, rather than going with the price low and hope for a
11 bidding war strategy, you were aiming at the other side of
12 that strategy where you're pricing higher than what you're
13 anticipating. Is that your testimony?

14 A I don't know that we were talking about a bidding war.
15 We were considering how fast we could find a buyer. My job
16 as a Trustee is not to leave assets listed indefinitely.
17 So, the idea was to price it so that we would get a buyer
18 within 90 days. That's sort of my general benchmark for how
19 long I like to have a property listed before I need to
20 adjust the price. So, that was my thinking.

21 Q All right. So, you were looking for a swift sale as
22 opposed to necessarily maximizing numbers. Is that
23 accurate?

24 A I don't know that I'd say swift --

25 MR. NOLAN: Objection. (indiscernible) Sorry, I'll

1 just object to the form of the question.

2 BY MS. HADDEN:

3 A I wasn't looking for what you might refer to as a quick
4 sale. I was looking for an efficient expeditious sale.

5 Q Okay. And you were aware at the time that you listed
6 the apartment that the order of the Court, transferring
7 ownership from 2 River Terrace, Apartment 12J, LLC had been
8 appealed to the District Court, is that right?

9 A Yes.

10 Q And, in fact, your counsel has appeared in the District
11 Court in that proceeding?

12 A Yes.

13 Q And I apologize, I had one other question that just
14 passed right through my head. I want to see if I can get it
15 back.

16 THE COURT: Sure, you can take a moment.

17 MS. HADDEN: Thank you, Your Honor, I appreciate
18 it.

19 THE WITNESS: Your Honor, I'll tell you it's not
20 easy to be a witness when you're also a practicing lawyer
21 and following your lawyer's instructions to be succinct.

22 THE COURT: I have been told that lawyers are
23 terrible clients, as a general rule. Nothing specific to
24 this case.

25 BY MS. HADDEN:

1 Q All right, I think the only other thing that I had
2 wanted to touch on briefly, Mr. Ehrenberg, was going back to
3 the line of questioning -- line of questioning, I apologize
4 -- about the Court's order. You had mentioned the
5 Department of Justice having been involved in the apartment
6 on and off throughout this case, is that right?

7 A I don't know what on and off means but, yes, they were
8 involved in seizing certain assets of Mr. Parmar's.

9 Q On and off -- and I apologize, that was unfair on my
10 behalf -- on and off as to this particular asset, Apartment
11 12J.

12 A It was initially on their list of assets that they were
13 seizing or in the process of trying to monetize, and then
14 they made a determination to stop doing that as to this
15 assets.

16 Q All right. And there were two different fronts that
17 they were following originally, is that correct? There was
18 an in-rem proceeding and the criminal proceeding?

19 A That's my understanding, yes.

20 Q And is it correct that the in-rem proceeding was
21 abandoned earlier in time than the criminal proceeding --
22 again, speaking particularly about this apartment?

23 A Regarding this apartment, yes, since the criminal
24 proceeding is still pending.

25 Q The criminal proceeding is still pending, yes. My

1 reference was more to the Department of Justice pursuing
2 this particular apartment in each of those proceedings. In
3 each of those proceedings it was abandoned -- well, in the
4 in-rem proceeding, that proceeding has now come to a close.
5 But in the criminal proceeding, it was abandoned in spite of
6 the fact that the criminal proceeding is still ongoing. Is
7 that accurate?

8 A I believe so.

9 Q All right. And these are all things that you're aware
10 of in your role as the Liquidating Trustee?

11 A Very much so.

12 Q Now, there were other assets that had been transferred
13 during and around the time of the go-private transaction
14 from the Debtors that have not necessarily been pursued by
15 you, is that correct?

16 MR. NOLAN: Your Honor, I'm going to object to the
17 form of the question as well as it's outside the -- the

18 MS. HADDEN: It is, I apologize. I wandered
19 outside the scope of the proceeding for a moment. I
20 apologize.

21 THE COURT: All right (indiscernible) withdrawn
22 then.

23 MS. HADDEN: It is withdrawn.

24 BY MS. HADDEN:

25 Q Mr. Ehrenberg, have you -- I realize you're in

1 California -- have you yourself seen the apartment,
2 Apartment 12JK?

3 A Only through photographs taken by my counsel.

4 Q And are there any significant characteristics or
5 unusual characteristics that you would say were unique to
6 this apartment, just based on those photographs? I
7 understand you haven't been there personally.

8 A No. My -- my impression was that it was a lived-in,
9 somewhat worn apartment. It -- as Mr. Stanton said, it
10 wasn't shiny and new.

11 Q Did it have any waterfront views or city views or
12 anything along those lines that you were able to observe?

13 A I think it did have a view of water. I'm not sure what
14 body of water.

15 Q I understand again that you're in a different place and
16 haven't been in the apartment, so...

17 MS. HADDEN: I have no further questions for this
18 witness. Thank you.

19 THE COURT: Thank you. Any redirect, Mr. Nolan?

20 MR. NOLAN: Yes, a couple questions, Your Honor.

21 REDIRECT EXAMINATION OF HOWARD M. EHRENBURG

22 BY MR. NOLAN:

23 Q Mr. Ehrenberg, as the Trustee of the Debtor, Orion
24 Healthcorp, did you -- was it your perspective to sell the
25 property at its highest and best use?

1 A As a condominium? Yes.

2 Q Yeah. And -- and why is that?

3 A I don't think I ever considered selling it as anything
4 other than a condominium?

5 Q Did you want, though, to maximize the price -- the
6 price that you could get for the apartment?

7 A Yes, in consideration of all of the factors surrounding
8 it, yes.

9 Q Right. And, ultimately, if this asset is liquidated,
10 is it a fair statement it would be subject to being
11 distributed to unsecured creditors, the proceeds?

12 A Under the confirmed plan -- I'm still in the process of
13 paying off the secured debt owed to the bank group. So,
14 depending on the timing of when this money would arrive, it
15 will either go first to the bank group or then -- it'll then
16 flow into the unsecured pool.

17 Q Okay. And as far as trying to -- or strike that. And
18 you sold resident -- residential or commercial property
19 previously -- this is not your first rodeo, correct?

20 A No, it's not. I have.

21 Q Okay. And in this particular case, you determined,
22 being out in California, that you wanted someone who had
23 expertise in the Manhattan market, is that a fair statement?

24 A Yes.

25 Q And, based on your prior experience, did you believe

1 Mr. Stanton fit the bill on somebody who had intimate
2 knowledge as to the residential market in Manhattan?

3 A Yes. Mr. Stanton had represented me previously in an
4 unrelated case.

5 Q And did you find his services were adequate in the
6 other case?

7 A Yes.

8 Q And did you rely on Mr. Stanton and the Stanton Hoch
9 group's expertise in selling this property?

10 A Yes.

11 Q And do you have any -- any reason to believe that the --
12 -- the offer that is before this Court of 4.8 million in cash
13 is not the best possible or fair market value offer for this
14 property as of April 2021?

15 MS. HADDEN: Objection to the form of the
16 question. It calls for speculation.

17 THE COURT: Would you rephrase the question,
18 please?

19 MR. NOLAN: Yes, Your Honor.

20 BY MR. NOLAN:

21 Q Based on your involvement with the property and your
22 utilization of Mr. Stanton and his real estate team to
23 market the property, do you believe that the offer that you
24 received for 4.8 million in cash was the best offer you
25 could receive in selling the property?

1 A Yes.

2 MR. NOLAN: No further questions, Your Honor.

3 THE COURT: I have one, Mr. Ehrenberg. Has -- has
4 anyone offered more than \$4.8 million cash, either before
5 the contract was entered into, or since the contract was
6 entered into?

7 THE WITNESS: No. No one has. And that's why I
8 wanted it to remain listed throughout the process until we
9 got to this court hearing.

10 THE COURT: All right. So, the property is still
11 listed, even though it's listed as under contract?

12 THE WITNESS: That's correct.

13 THE COURT: Does either side have any further
14 questions to Mr. Ehrenberg, based on the Court's questions?

15 MS. HADDEN: I -- just one question based on the
16 Court's question. And, Mr. Ehrenberg, you may or may not be
17 able to answer this. When a property is listed for sale and
18 is then under contract, doesn't that listing remain active
19 until the sale goes through because contracts do sometimes
20 fall apart?

21 THE WITNESS: Yes.

22 MS. HADDEN: Thank you.

23 MR. NOLAN: No questions, Your Honor.

24 THE COURT: Thank you. Mr. Ehrenberg, you are
25 excused as a witness. You're obviously welcome to stay for

1 the hearings if you wish to do so.

2 THE WITNESS: I think I'll take option two and put
3 myself on mute.

4 THE COURT: All right. Is there any further
5 evidence being offered by either side (indiscernible) with
6 the sale motion or (indiscernible) appeal?

7 MR. NOLAN: No, Your Honor.

8 MS. HADDEN: No, Your Honor.

9 THE COURT: All right. All right, what I'm going
10 to do is this: I'm going to take brief arguments on the
11 same motion and the stay pending appeal motion. I'm going
12 to first address, though, the motions that relate to the
13 court's partial judgment granting the relief that was
14 docketed on March 1, 2021 in the adversary proceeding 28-
15 0851.

16 It does appear to the Court, in the best interest
17 of justice and in the speedy and efficient administration of
18 the adversary proceeding, as well now as it relates to
19 issues arising in the main case, for the Court to make the
20 judgment docketed at Docket 64 a final judgment for appeal
21 and all other purposes, and then to sever out into a
22 separate adversary proceeding the remaining claims in that
23 adversary proceeding for future and further determination.

24 The Court does that for a couple of reasons. One,
25 it simplifies the appeal that the Defendant, 2 River

1 Terrace, Apartment 12J, is wishing to prosecute, which it is
2 certainly entitled to do so. And it also severs out parties
3 who remain in the adversary proceeding as to the claims that
4 have yet to be adjudicated and would not be and need not be
5 involved in the appeal. So, the process is the judgment
6 entered March 1st will become the final judgment in 20-8051.
7 The remaining claims will be severed out and assigned a
8 separate adversary proceeding number or we'll issue an order
9 to that effect so that the other claims and issues may move
10 forward in due course.

11 With that -- with that said, then I'll take
12 argument first from the Trustee on the sale motion; then
13 from 2 River Terrace in opposing the sale motion and in
14 asking for a stay pending appeal. And then back to the
15 Trustee on the sale motion and in opposition to the stay
16 pending. So, Mr. Nolan?

17 MR. NOLAN: Yes, Your Honor. Mr. Scharf, I
18 believe, is going to argue the sale motion. We've kind of
19 split duties here, Your Honor. And then when you address
20 the issue of the stay pending appeal, I'll handle that
21 piece.

22 THE COURT: All right, fair enough.

23 MR. SCHARF: Thank you, Your Honor. Ilan Scharf,
24 Pachulski Stang Ziehl & Jones, on behalf of the Trustee with
25 the sale motion. Your Honor, we are here today on the

1 motion to sell the apartment located at 2 River Terrace,
2 Apartment 12J, which we're referring to as the Property.

3 There is one objection from 2 River Terrace,
4 Apartment 12 J, LLC, who we'll refer to as the Trustee, the
5 Transferee or the Defendant, then we'll get to the objection
6 in a moment. And, Your Honor, I think there are a number of
7 matters based on the testimony you've heard that are really
8 not in dispute with respect to this property. There are
9 some matters that clearly are going to be in dispute and
10 we'll address those.

11 The Trustee obtained possession of the apartment
12 after the Court's ruling was read into the record on
13 February 9, 2021 in Adversary Proceeding 20-08051. As of
14 that date, February 9th, the property was encumbered by a
15 lien that was asserted by the condominium board for unpaid
16 taxes, common charges and fees in the amount of
17 approximately \$463,000. And that amount may increase and,
18 frankly, the Trustee is incurring ongoing charges and is
19 paying current charges that are -- that arise since the
20 Trustee took possession of the apartment.

21 The board also obtained the judgment against the
22 Defendant in the approximate amount of \$200,000, which was
23 part subsumed by the lien. In addition, the board had
24 scheduled a sheriff's sale for the apartment prior to the
25 Trustee obtaining possession. That sheriff's sale has been

1 adjourned from time to time but is still out there. And
2 given the nature of sheriff sales, there's a substantial
3 risk that if this property is sold through that process,
4 we'll be arguing over how to split crumbs as opposed to how
5 to split \$4.8 million.

6 The Trustee's possessory right was then
7 memorialized in a judgment that was entered by the Court on
8 March 1, 2021. That's Docket Number 64, I believe, in the
9 adversary proceeding -- or 69 in the adversary proceeding.
10 Defendant did not turn over any keys or access cards to the
11 property, notwithstanding Your Honor's instructions to do so
12 in the order. Therefore, the Trustee replaced the locks and
13 took possession of the apartment.

14 The Defendant appealed. The Defendant -- and
15 we'll address the issues regarding the statement and appeal
16 when that motion is heard.

17 The Trustee's charge in this case is to liquidate
18 assets and distribute net recoveries to creditors. In light
19 of that duty, the Trustee expeditiously undertook a sale of
20 the property. He retained Compass and Stanton & Hoch came
21 as real estate agent, based on their extensive expertise
22 selling real estate in Manhattan. I believe that expertise
23 was in full display as Mr. Stanton was questioned on various
24 comps as well as the record of their -- the brochure
25 explaining who they are. But Your Honor clearly saw today

1 that Mr. Stanton has a deep understanding of Manhattan
2 property and how to market the property and maximize value.

3 The Compass team marketed the property, as it was
4 described in the sale motion. They advertised the property,
5 they showed the property, and they obtained two offers for
6 the property and ultimately selected the buyer with an offer
7 of \$4.8 million, and the Trustee accepted that based on a
8 number of factors, including it was the highest offer from a
9 monetary perspective. It's also an all-cash offer that is -
10 - that, in comparison to the \$4.6 million 80 percent
11 financing contingency offer that is being held as a backup
12 offer. No other higher or better offers came in, so this is
13 the maximum we could obtain for the property.

14 In addition, Mr. Stanton's testimony made it very
15 clear that the marketing process was appropriate. The
16 marketing process obtained the best property -- the best
17 sales price. And the fact that the Defendant purchased the
18 property for a higher value well before the COVID-19
19 pandemic is clearly -- is of no consequence. This is a sale
20 that was appropriate under the circumstances.

21 In addition, while we are often -- we often push
22 for auctions and undertake an auction process in bankruptcy
23 cases, in this case, given this market, given the advice
24 received by the Trustee, as well as the Trustee's own
25 expertise in selling properties over -- as described in his

1 declaration, which constitutes -- sorry?

2 THE COURT: I have a question. And it may cross -
3 - cross the streams, so to speak, as between what you and
4 Mr. Nolan are going to present, but why not -- I'm not
5 saying I'm going to do this. This is a capital I, capital F
6 type question. But why not at this juncture essentially
7 treat the sale as if it were a sale free and clear of liens,
8 treat the appeal, if you were 2 River Terrace, as if it were
9 a lien. Give that appeal some time to percolate. If they
10 win on appeal, they get the money from the property; if they
11 lose on appeal, the estate keeps it. As a way of letting
12 the process go forward, monetize the asset but let 2 River
13 Terrace prosecute the appeal.

14 And if I'm reversed -- in the District Circuit
15 Court, the money will be sitting there, at least for some
16 reasonable period of time, for them to prosecute that
17 appeal.

18 MR. SCHARF: Sure, I think the estate -- and this
19 probably does cross across both -- both motions -- but, Your
20 Honor, I think that the estate would be highly prejudiced by
21 doing that. First, there are -- there is a substantial
22 amount that's owed to the condo board. That lien isn't
23 going anywhere and --

24 THE COURT: Oh, yeah -- no, that's -- I'm sorry.
25 In the Court's question -- and I did not articulate that --

1 that judgment's going to be paid. No matter who owns the
2 property, that judgment lien has to be paid. That would be
3 off the table in the Court's hypothetical.

4 MR. SCHARF: Sure. And then on top of that, Your
5 Honor, the Trustee would incur fees -- has been incurring
6 fees, professional fees associated with the apartment,
7 recovery fees. Those will continue to be incurred -- and
8 has also incurred broker fees that he'd have to pay. He'd
9 have to pay the broker fees, I think, once the apartment is
10 sold. And, to the extent Your Honor goes that way, that
11 really should come out of the apartment as well.

12 And Your Honor -- Your Honor certainly has the
13 right to do that, but the Trustee should be able to use this
14 cash unless there's the ability to get a stay pending
15 appeal. Really, Mr. Parmar has tied up this apartment for a
16 number of years, and the Trustee needs to -- has tied up
17 this apartment for a number of years. There's going to be -
18 and if anybody's taking the risk or the burden of putting up
19 money in order to avoid a sale or hold this money hostage,
20 to the extent he's going to get a stay pending appeal, which
21 is the effect -- one of the effects of doing this where you
22 attach the proceeds, Mr. Parmar should put up a bond and not
23 tie up the estate's assets any further.

24 I believe Mr. Ehrenberg also has his hand up.

25 THE COURT: Well, he doesn't get to talk. He's

1 got fancy lawyers to do that.

2 MR. SCHARF: But he can't whisper in my ear today,
3 Your Honor.

4 MR. EHRENBURG: My counsel may not be thinking
5 also that under the plan, the secured bank tranche continues
6 to accrue interest. So, I've been trying to distribute
7 money to them as quickly as possible. So, if I had \$4-1/2
8 million to distribute and I couldn't, then interest will
9 continue to accrue until the bank group is paid in full.

10 THE COURT: So, as a recovery action, would these
11 proceeds potentially -- because I'm not going to tie you
12 down because this wasn't part of the homework assignment --
13 but are these proceeds potentially subject to the -- to the
14 bank's rights under the plan to --

15 MR. EHRENBURG: Yeah, all of the monies that I've
16 been recovering are being distributed according to the plan.
17 And so I've distributed, I think, over \$30 million thus far.
18 As the Court will recall, the Destra funds are still being
19 held in trust. But if I had the funds from this
20 liquidation, I would immediately distribute the majority of
21 it, leaving a small amount behind for expenses. But most
22 would get distributed to the banks and reduce their debt.

23 THE COURT: What's the accrual rate to the bank
24 group under the plan, if you recall?

25 MR. EHRENBURG: It changes, and it has gone down

1 over the last two years, with interest rates. My best
2 recollection is that it's currently 5 percent.

3 THE COURT: All right. Thank you, Mr. Ehrenberg.

4 MR. EHRENBURG: Sure.

5 THE COURT: All right. I want to flip the script
6 and talk to Ms. Hadden about this question because I've
7 found in my 35 years -- it makes me feel old saying that --
8 in doing this, and especially the last 13 wonderful years as
9 a judge, it's sometimes helpful for the lawyer to know what
10 the judge is thinking as opposed to what they want to argue.
11 So, why don't we talk about what the judge is thinking, and
12 I'll let you go back to what you want to argue.

13 But, Ms. Hadden, let me flip it to you and ask you
14 essentially the same question because this does cross the
15 stream between the sale itself and your client's request for
16 a stay pending appeal. 2 River Terrace doesn't walk, and
17 talk, and breathe. And I know the Supreme Court has said
18 that corporations are people too and have certain rights
19 incident. But it's not -- it is not living in the
20 apartment. There's no flesh human (indiscernible) the
21 claims as to be their homestead or some other inherent right
22 of occupancy.

23 There is an enormous judgment lien that's not
24 getting any smaller. No offense, Mr. (indiscernible), to
25 your client. So, why not monetize the asset, hold the net

1 proceeds, and you can talk about what net means for some
2 reasonable period of time, and maybe put some other
3 conditions on this while you all prosecute the appeal -- at
4 least to the District Court on whether or not the Court was
5 wrong in granting summary judgment invested title with the
6 Trustee.

7 MS. HADDEN: So, although you're correct, Your
8 Honor, that my client is a corporation and -- to the extent
9 that the corporation is a person too, the person who
10 represents that corporation or that LLC is very attached to
11 this apartment. He loves the view, he likes the building.
12 Although Mr. (indiscernible) may not believe that, it's
13 actually true.

14 He's commented on some of the neighbors who have
15 apartments either above or below. So, he's very attached to
16 the location itself. And the location itself, while both
17 Mr. Ehrenberg and Mr. Stanton pointed out that there is some
18 wear and tear on the apartment just by virtue of its having
19 been built -- I believe Mr. Stanton said in 2007, and I have
20 no reason to question that -- so, say, 13-14 years ago --
21 despite that, he's very attached to the apartment itself.
22 And it is a unique asset.

23 I mean, obviously, real property does have unique
24 characteristics and unique fixtures, particularly where it's
25 something that's not, you know, a row house or one of those

1 properties where you can have it prefabricated and put
2 together next to 20 other buildings that look exactly the
3 same. This is a unique asset with a unique view, unique
4 characteristics. So, for that reason, he's very opposed to
5 the idea of monetizing the asset and just having it be a
6 fight over money. He's very invested in the fight over the
7 location itself.

8 It's certainly true that he hasn't been inside of
9 the apartment -- and, again, Mr. (indiscernible) and I would
10 be on opposite sides of the fence about the reasoning behind
11 that -- and I'm not trying to get into that at this point at
12 all. But he is very interested in the location itself.

13 THE COURT: In the -- in the purposeful choice of
14 the word invested in this property, in order to either get a
15 stay pending appeal or prevent the sale of the property --
16 because the evidence before the Court is this: This is the
17 (indiscernible) -- this offer is the only game in town.
18 There's no higher offer, there's no better offer. The
19 Debtor's not come forward, the Defendant's not come forward,
20 nobody's come forward with a better offer.

21 And so as you know -- as you all know, the two
22 bankruptcy are how much and when? And the how much question
23 is answered with \$4.8 million. The when is pretty soon, in
24 terms of what's before the Court.

25 So, is whoever is behind the 2 River Terrace

1 entity prepared to pay off the \$470,000 judgment and post a
2 bond in the neighborhood of \$5 million to preclude the sale
3 form going forward? Because that's basically what it's
4 going to take.

5 MS. HADDEN: I had discussed with him posting a
6 bond, at least in the judgment amount, and he certainly was
7 prepared to do that. I had not discussed with him posting a
8 bond in the full \$5 million amount. I don't know that he
9 has the capacity to do that simply because, as everyone is
10 aware, so many of his assets have been frozen based on the
11 criminal case.

12 I think if he does have the capacity, it is
13 something that he would be willing to do because I know that
14 he does want to try to preserve this asset. It's simply a
15 question of whether or not it's logistically possible
16 without running afoul -- afoul of Department of Justice
17 guidelines. So, I would have to investigate that to see if
18 it was possible to post a bond for the entire amount of the
19 apartment as well as paying off the full judgment.

20 MR. NOLAN: But, Your Honor --

21 THE COURT: Isn't that really all that's behind
22 Door Number Two? I mean, Door Number One is I approve the
23 sale, the sale closes, no strings attached, Mr.
24 (indiscernible) client is paid in full in accordance with
25 its rights under the State Court judgment. Closing costs

1 are paid, the funds are readily available to the estate.
2 The appeal goes forward. As it goes forward, obviously, on
3 the timing as would be appropriate for the District Court.
4 That's their jurisdiction, not mine. That's Door Number
5 One.

6 Door Number Two is a substantial bond in the
7 amount of the sale price plus interest that's being accrued
8 on the obligations of the estate under the confirmed plan,
9 and payment of the judgment in full with Mr. (indiscernible)
10 client. That's Door Number Two. There is no Door Number
11 Three.

12 MR. SCHARF: Before Ms. Hadden speaks, Your Honor,
13 I know I'm not on the motion itself, but I want to just
14 point out to the Court that the amounts we're talking about,
15 even the 470,000, are less than what is actually owed to the
16 condominium. The actual payoff amount will be determined at
17 the time the payment's ready to be made. But their share of
18 poundage fees that need to be paid, their attorneys' fees
19 that are accruing under the bylaws, and the lien is both not
20 only under the judgment but under a recorded common charge
21 lien with the New York City Register's Office, which accrues
22 all amounts unpaid through the date the lien is paid in
23 full.

24 I just want the record to be clear on that. We're
25 using a \$470,000 number that is not an accurate payoff

1 amount at this time.

2 THE COURT: What is the hand grenade distance from
3 that number to a more approximately correct number? Is it
4 bigger than a breadbox?

5 MR. SCHARF: I have to say that I haven't computed
6 it because it just keeps on rolling, so to speak. I did
7 that computation for Mr. Nolan. Mr. Nolan, was that about
8 three, four months ago, maybe, I had sent you an e-mail? I
9 could dig it up while Your Honor continues.

10 THE COURT: All right. And the intention of the
11 discussion of a 470 number was for ballpark purposes, not
12 for, you know, precisely binding your client down. That's
13 generally the number that's been percolating.

14 MR. SCHARF: I understand. I just wanted it to be
15 a little clearer on the record so that we're not just
16 accepting that, but with Your Honor's caveat, I understand.
17 In the meantime, I'll -- I will go on mute and see if I can
18 try to get a better sense of where it stands today.

19 THE COURT: All right. Very well. Thank you.

20 MR. SCHARF: Thank you.

21 MS. HADDEN: In the meantime, I've reached out to
22 my client as well to see if I can confirm his ability to
23 meet those parameters. I realize his concern, of course,
24 is, say, with door number one as Your Honor described it,
25 the Court approves the sale, the sale goes through, the

1 apartment doesn't leave obviously because it's a fixed set
2 of real estate but it goes to another owner and is no longer
3 in the picture and no longer recoverable by any means to the
4 LLC, and then the district court sees our viewpoint, the
5 angels sing and comes down with a judgment saying, no, this
6 never -- this property never should have gone over to the
7 Trustee, it still belongs to the LLC, that leaves us in a
8 situation where it's really, from my client's perspective,
9 impossible for the LLC to be made whole.

10 The only thing that the LLC would be looking at at
11 that point would be recovering a sum of money lower than
12 what it paid for the apartment and not having the apartment,
13 and that's the reason, of course, for us seeking the stay.

14 THE COURT: I'm not going to be determining that
15 this particular property is so unique that it should for
16 that reason alone be subject to a stay pending appeal. As
17 much as an individual who may or may not be an owner or
18 controlled purchaser of 2 River Terrance might feel strongly
19 about this apartment, it is not so unique, so unusual, so
20 vested with having lived in, raised family, and things of
21 that nature, that I'm going to find it to be so unique that
22 for that reason alone either the sale motion should be
23 denied or a stay pending appeal should be granted.

24 So, again, that was door number three. There is
25 no door number three. It's either sold and (indiscernible)

1 fighting over the proceedings during -- unless the District
2 Court stays it first, which is always an option, or the
3 judgment Debtor pays the -- pay the judgment lien that's
4 current and threatening the property with the sheriff's
5 sale, posts a substantial bond in the \$5 million range, to
6 secure a stay pending appeal, and then we'd have to address
7 what happens with the ongoing accruing monthly charges that
8 right now the liquidated trust is paying.

9 MS. HADDEN: All right. I guess my response to
10 the ongoing charges would simply be that the liquidating
11 Trustee chose to take on a property that has ongoing
12 charges, that it was well aware were in existence and were
13 in fact part of an accruing judgment, so it's not like it's
14 been a mystery to any of the parties involved that those
15 continuing charges were something that would be a factor,
16 and if, for example, the Trustee had listed the property and
17 was still awaiting a buyer, he would still be paying those
18 charges because he chose to take on this particular asset as
19 opposed to an asset that doesn't have those particular forms
20 of liabilities, and I think that's one of the reasons why
21 the Trustee is trying to move as swiftly as possible, you
22 know, not giving the apartment away but also not necessarily
23 taking a route that would look for the highest price but a
24 route that would look for the best price he can get quickly.

25 THE COURT: All right. Thank you.

1 MAN 1: The Trustee didn't choose to take on a
2 property with (indiscernible). The Trustee chose to recover
3 an asset that had been fraudulently transferred to 12JK
4 using estate money that was taken out of the estate. So,
5 we're not here because the Trustee chose to go over a
6 property with (indiscernible). The (indiscernible) was
7 created by Ms. Hadden's client.

8 THE COURT: Because I've crossed streams into the
9 stay pending appeal now, Mr. Nolan, do you want to address
10 that aspect? And again (indiscernible) many of you -- many
11 attorneys have argued (indiscernible) many times in 13 years
12 now. In my ongoing interest, and not being cryptic, Mr.
13 Nolan, since the stay pending issue was delegated to you
14 (indiscernible) work, do you want to address the issues that
15 the Court has raised on them?

16 MR. PITTINSKY: Your Honor, if I could just
17 quickly chime in, I would say that the amount owed to the
18 condominium is closer north of 500,000 at this point. I
19 found in an e-mail 470 back about a year ago, and under New
20 York law, that judgment is running 9 percent per year,
21 probably the best rate of return that exists right now as
22 things go, and of course we have the actual lien itself.
23 So, I would say, as you say grenade guess, at least 500,000.

24 THE COURT: All right. Thank you. All right.
25 Mr. Nolan?

1 MR. NOLAN: Yes, Your Honor. I set forth in our
2 papers, Your Honor, that to stay a judgment pending appeal
3 is only granted in limited circumstances. It's the
4 exception. It's not the rule. In Re: Paolo Gucci set forth
5 that ruling.

6 And it's based on four elements that the Court
7 should consider. And the law in New York and the federal
8 rule -- and the federal rule is very clear that the moving
9 party, since it's an exception, has to satisfactorily
10 evidence all four factors to the Court. That's In Re: Taub
11 (2010), Bankruptcy Lexis 3458 (E.D.N.Y. 2010).

12 And my papers, opposition papers, acknowledged
13 that Mr. Parmar's argument with respect to staying the
14 appeal is probably all in the one single bucket that he will
15 be harmed.

16 But before I address that element, I think we have
17 shown to the Court that three of the elements are
18 unequivocally, or at least the evidence shows, that they're
19 clearly on the Trustee's side of the ledger.

20 Whether a party will suffer substantial injury if
21 the stay is issued, Mr. Parmar's opinion was it's just the
22 Trustee. He's caused this problem. That's not an accurate
23 statement.

24 There is the Trustee, the creditors of the estate,
25 the homeowner's association who has been a bank for three

1 years carrying this debt. There's more parties involved
2 than just the Trustee.

3 The third element, whether the movant has
4 demonstrated a substantial possibility of success on appeal.
5 I've submitted case law to the Court that that is the most
6 significant factor of the four factors. It's not whether
7 the movant will suffer irreparable -- or suffer injury, and
8 I don't see any issue that has been raised in appeal that is
9 different than the issue that was presented before this
10 Court.

11 These are not complicated issues. It goes to the
12 Court's function as the gatekeeper. The circuit authorities
13 are very clear. It's not lower court authority but the
14 circuit authorities in the U.S. Supreme Court are very clear
15 on what a judge should consider, that it must be admissible
16 evidence. So, I believe, Your Honor, that the -- Mr. Parmar
17 has not carried his burden as to the third element either.

18 And then the fourth element, Your Honor, is a
19 public interest served in granting a stay of the adversary
20 proceeding before Your Honor? Unequivocally, I don't think
21 it has been. I think the Court is laboring with the
22 challenge to keep the homeowner's association and Mr.
23 Pittinsky -- their interests addressed. They're also a
24 party in interest even though they're not a party to this
25 lawsuit. They have initiated state court legal proceedings.

1 I set forth authority to the Court that it is in the public
2 interest of the Court to expedite and to efficiently resolve
3 litigation. The Trustee's estate is also a factor that
4 falls into the public interest, Your Honor.

5 The expeditious and efficient handling of
6 bankruptcy matters and distribution to the trust, those are
7 also matters that are worthy of being satisfied under the
8 public interest element.

9 We set forth three specifically public interests
10 that are served in denying this appeal. I think the second,
11 third, and fourth elements outlined in In Re: Taub warrant
12 against granting the motion.

13 And then we come to the issue which Ms. Hadden has
14 raised, whether the movant will suffer injury, yeah, that's
15 a -- I won't sugarcoat it. That is an issue. In my
16 experience, when a judgment goes against me, most clients
17 will have to have a tough determination, decision if they're
18 going to appeal it, and if they're going to appeal it, you
19 better stay the underlying proceedings because the law is
20 that until that decision is overruled, the decision of the
21 underlying court is the decision.

22 And in this case, they waited until after the
23 liquidating Trustee marketed, sold the property. It's a
24 number of months later. We're at the end of the road here.
25 We have a willing buyer, \$4.8 million all cash. It's a

1 dream come true to get an all cash offer. It's not the
2 commonplace, and so yes, we're in a precarious position
3 right now, Your Honor, but the Trustee would submit it's not
4 because of the Trustee moving this case along and selling
5 the property. It's because the concept to fight this sale
6 came into place, and that raised the issue of the bond and
7 the appeal and probably is making Mr. Parmar make a decision
8 now in June of 2021 that he probably didn't want to decide
9 back in February of 2021.

10 And just like I tell my kids, you know, when you
11 have a cavity and you don't deal with it, it doesn't get
12 better with time. You know, you need to deal with the issue
13 then and there, and I would submit to the Court on this
14 element of whether the movant will suffer injury, that
15 injury has been hanging over the defendant and Mr. Parmar
16 for quite a long time. The sheriff's sale was lurking in
17 the background at the time I got involved, and I had the
18 pleasure of talking to Mr. Pittinsky at the time who told me
19 that, you know, we're owed a lot of money and this place is
20 going to be sold.

21 And then for the Trustee, we were playing defense
22 trying to, you know, move this case along and stop the
23 sheriff's sale so we could get the highest and best price or
24 at least get an adjudication of the merits.

25 So, in sum, Your Honor, I would submit that the

1 harm that the movant will suffer is created based on what
2 Mr. Parmar and the defendant has done by not paying for
3 three years' worth of upkeep. He essentially took the
4 position of self-help that he wasn't going to pay. It put
5 this asset, \$5.6 million asset of the estate, in jeopardy
6 because that's what the estate paid for it, and justice is
7 not served by allowing the stay of this appeal.

8 THE COURT: Thank you, Mr. Nolan. Anything
9 further, Ms. Hadden?

10 MS. HADDEN: Just very briefly, Your Honor. I
11 think I did address all of the four factors in my papers, so
12 I won't go over them in exhaustive detail, but since they
13 were just raised by Mr. Nolan, just very briefly, of course
14 there's the question of irreparable harm to the movant,
15 which as Mr. Nolan and I disagree on that particular aspect,
16 I (indiscernible) disagree on all four factors. That's why
17 we're on opposing sides, sort of our jobs.

18 THE COURT: Well, it could be the other way
19 around.

20 MS. HADDEN: It could be.

21 THE COURT: (indiscernible) opposing sides because
22 you disagree. You disagree because you're on opposing
23 sides.

24 MS. HADDEN: Yes. We disagree because we're on
25 opposing sides. In my particular case, I of course believe

1 that my side is correct and that my client will in fact
2 suffer an irreparable harm if this asset is sold to anyone,
3 because under Section 363M, once it's sold, there's no way
4 of in any way, shape, or form appealing that process or
5 retrieving the property.

6 As to -- and actually, I just want to very briefly
7 address the sheriff's sale. I realize that both --

8 THE COURT: Yeah, if you (indiscernible) on that,
9 because what makes -- what also makes that argument
10 difficult is this property has been facing a foreclosure
11 sheriff's sale for let's call it quite some time, but the
12 judgment that's before the Court in favor of the condominium
13 board is from September 2019, so 2 River Terrace has been in
14 the process of losing this property for a year and a half
15 and has essentially done nothing to protect it.

16 MS. HADDEN: So -- and that's where I want to
17 somewhat disagree. We haven't done -- for lack of a better
18 way of phrasing it, we haven't done as much in the
19 bankruptcy in order to protect it because it was only in
20 2020 that the apartment became from the LLC's issue -- from
21 the LLC's perspective at issue in the bankruptcy. That was
22 when the adversary proceeding was commenced and that was
23 when we began defending that proceeding.

24 As to the state court judgment and the sheriff's
25 sale, each time that a sheriff's sale has been scheduled,

1 we've reached out to try to oppose that, attempt to deal
2 with that, have it stayed, have it put off, have it
3 canceled, and there are a number of different routes that
4 that took place. I wasn't involved in it as much as my
5 partner was, Mr. Parlatore, primarily because one of the
6 issues was the fact that at that point the Department of
7 Justice still had the apartment as a defendant in the
8 (indiscernible) proceeding and also listed as a potential
9 asset in the forfeiture allegation in the criminal case.

10 So, we had multiple different sharks circling, so
11 to speak, and basically we're heading off each one as it
12 came. We had also filed a state court proceeding.
13 Essentially Mr. -- and I don't want to get, you know, too
14 far into that whole argument with Mr. -- with Mr.
15 Pittinsky's client and that sort of side issue, but
16 essentially my client's claim has been that once Your Honor
17 issued the order back in I believe it was June of 2018 -- I
18 may very well have that date wrong, but once Your Honor
19 issued the order that was essentially attempting to freeze
20 in place a number of assets owned by Parmar Entities
21 including this particular apartment, the building barred Mr.
22 Parmar from access to the apartment.

23 And that -- I realize -- to be clear, I can see
24 Mr. Pittinsky breathing deeply and sitting back in his
25 chair, and Mr. Pittinsky, I understand that your client says

1 that that's not the case. I'm not in any way, shape, or
2 form arguing the facts of that particular side issue at the
3 moment. I'm simply trying to, you know, bring it to Your
4 Honor's attention that when the Court says that we've done
5 nothing, one of the reasons that that judgment has built up
6 to where it has is because it was Mr. Parmar's position that
7 he was being deprived of the use and enjoyment of his
8 property.

9 And for that reason, he filed a judge -- a
10 proceeding in state court after I had become involved. I
11 had at the time spoken with Mr. Pittinsky and we agreed to
12 essentially hold it in abeyance, put off him needing to do
13 an answer or needing to do any legal work on it,
14 essentially, because right around that same time the
15 adversary proceeding was taking place and Your Honor had
16 become involved, Mr. Nolan was involved, and there were
17 essentially two separate proceedings going on at the same
18 time.

19 So, Mr. Pittinsky and I had agreed to hold that in
20 abeyance while we dealt with this, because if, for example,
21 what happened happened and Your Honor transferred the
22 apartment to Mr. Ehrenberg, it would have been a tremendous
23 waste of time and money for both myself and Mr. Pittinsky
24 (indiscernible).

25 THE COURT: (indiscernible) is a facially judgment

1 of a New York state court determining as of September 6,
2 2019 (indiscernible) some \$200,000 owed to the condominium
3 (indiscernible).

4 MS. HADDEN: Yes.

5 THE COURT: So, whatever was in the who shot John
6 arena in 2018 and most of 2019 is kind of irrelevant from
7 this Court's vantagepoint because there's a facially valid
8 judgment. No -- there's -- no court has set it aside.
9 There had been voluntary suspension of collection efforts.
10 So, while y'all may disagree about who shot John, nothing
11 was done in terms of paying the common charges that arose
12 prior to entry of that judgment, because they weren't paid.
13 They haven't been paid since. The judgment hasn't been paid
14 since. And it sounds that the essence of your argument is
15 that once -- I'll use Mr. Parmar only because you're using
16 Mr. Parmar -- once Mr. Parmar realized that his property
17 might not be swept up in ancillary litigation involving the
18 U.S. Department of Justice, then he got real interested in
19 it and got very engaged in the fight here in the adversary
20 proceeding on the fraudulent transfer.

21 That's not a very compelling argument for
22 irreparable injury.

23 MS. HADDEN: The only -- where I would take issue
24 with Your Honor's description of that is that he only became
25 interested in it --

1 THE COURT: He only became real interested.

2 MS. HADDEN: All right. So -- and that's where I
3 disagree. It's not that he wasn't real interested in it
4 before. It was that he was protesting on multiple fronts,
5 and as he was dealing with each front, we were all under the
6 impression, accurate or inaccurate, that the apartment was
7 essentially frozen in place by the fact that the Department
8 of Justice was attacking it from two sides. There was a
9 bankruptcy court ruling that also attached it. Essentially
10 it was -- it had the state court judgment. It had things
11 going at it from all different directions and it seemed to
12 be frozen in place.

13 So, it wasn't that he wasn't real interested in it
14 or that the LLC wasn't real interested in it or that the LLC
15 had abandoned it. It was simply that it appeared -- and I'm
16 trying to think of the best way to describe this, but as if
17 everyone -- if I have multiple different people standing
18 around this pen and they're all pulling on it from opposite
19 directions, the pen isn't really going to go every --
20 anywhere, because everybody's exerting equal force on it.

21 That's essentially the way that the LLC was
22 viewing this particular apartment, was that it was frozen in
23 place by the number of different parties attempting to get
24 it, and each of those different parties we were interacting
25 with and opposing, but it did appear that it was almost

1 stayed for lack of a better term by virtue of the number of
2 different parties trying to get a piece.

3 So, I would take issue with the Court's
4 perspective that he only became interested later on. It's -
5 - it may very well appear that way from your vantagepoint,
6 and I fully understand that. I'm just trying to give some
7 backstory. Whether it's a backstory that you find
8 satisfying or not, it is a backstory that's there, so.

9 THE COURT: Fair enough. And (indiscernible) on
10 the stay? Anything further on the stay motion?

11 MR. PITTINSKY: Would you permit myself, quickly,
12 as an interested party just to opine on the stay motion?
13 The condominium had an interest with respect to who owns the
14 unit and settling that issue, and I can be very brief.

15 From the board's perspective, they want a unit
16 owner that is known, clear, and is going to comply with the
17 obligations a unit owner has under the bylaws. The status
18 of this unit now, although in Mr. Ehrenberg's ownership as a
19 liquidating Trustee, is still to a certain extent inchoate
20 and that is detrimental and prejudicial --

21 THE COURT: I'm sorry. Did you say inchoate?

22 MR. PITTINSKY: Yes, incomplete, uncertain, and as
23 a result, that gives concern to the board. Who's permitted
24 to enter? Who's not permitted to enter? Who's responsible
25 for obligations?

1 And I understand Mr. Ehrenberg is under an
2 ownership by virtue of the order, but you've got claims by
3 Ms. Hadden's client as well. We want just settlement and
4 resolution of ownership once and for all, and for that
5 reason we are against a stay, prefer that the unit get sold
6 into an owner that's going to treat it as their home, not
7 Airbnb it as Ms. Hadden's clients were doing when they owned
8 it, actually will live in the unit and take care of it in a
9 proper course.

10 As far as Ms. Hadden's statement that somehow they
11 did anything with respect to this unit and during the
12 supreme court, that is just not true. Her partner in charge
13 was notified of the state court action. They did not
14 appear. They did not oppose it. And in fact, only after
15 this bankruptcy did they bring this action claiming they
16 were denied access by Mr. Parmar. They sought a stay of the
17 sheriff's sale, which the Court rejected for improper
18 filing, and the stay has never been sought.

19 There's been no action by her client with respect
20 to preserving this asset. And I don't want to get into the
21 facts, but just for the record, Ms. Hadden's statement that
22 anyone was ever denied access is just factually false. And
23 on that note, I think I have said more than enough, Judge.

24 THE COURT: All right. Thank you. All right.
25 And here's what I'm going to do. I'm going to have you all

1 stay in the hearing. I've got this -- I've got the issues.
2 I'm going to try to give you all the ruling here in about
3 the next 15 or 20 minutes. So, please stay in the Zoom
4 hearing. I'm going to exit temporarily, but I'll be back in
5 about 15 minutes, and if I have a ruling for you I will tell
6 you that I do and what it is. If I can't rule on it today,
7 then I'll let you know that as well.

8 All right? So, please stay in the Zoom hearing.
9 Please feel free to turn your microphones and cameras off,
10 and then we'll notify you when I'm back. Thank you.

11 MR. NOLAN: Thank you, Your Honor.

12 MS. HADDEN: Thank you, Your Honor.

13 MR. PITTINSKY: Thank you, Judge.

14 (Recess)

15 THE COURT: All right. This is Judge Trust. I'm
16 going to ask that the parties will now return into the
17 hearing or at least turn your cameras back on. Please leave
18 your microphones muted. Can you all hear me okay? Thumbs
19 up?

20 All right. I am prepared -- the Court is prepared
21 to rule on the two pending motions. One is the main case
22 motion to sell the 2 River Terrace, Apartment 12J. The
23 other is the motion for a stay pending appeal.

24 I'll first take the sale motion filed in the main
25 case. The Court credits the testimony of Mr. Stanton and

1 Mr. Ehrenberg in support of the sale of that apartment, that
2 12J unit, for \$4.8 million all cash with 10 percent of that
3 amount being \$480,000 being deposited to secure the sale.

4 The Court notes based upon the testimony that this
5 is the highest and best offer for the property during the
6 marketing period by the liquidating Trustee. There has been
7 no higher or better offer either during the marketing period
8 or since the Trustee accepted his contract and continued to
9 market the property. No one has come forward with a higher
10 or better offer. There's no evidence in the record from the
11 objecting party to River Terrace that there is a higher or
12 better offer available. There was no evidence in the record
13 that the process by which the unit was offered for sale or
14 generated this contract was anything other than an open,
15 fair, and arm's-length process which resulted in this
16 contract of sale being proposed and being accepted.

17 The condo unit has been properly marketed. It was
18 an adequate and fair process and it's a proper exercise by
19 the liquidating trust (indiscernible) to accept this
20 contract and consistent with his obligations under the
21 confirmed plan of reorganization to ask that the Court
22 approve it, and the Court does approve it. The motion is
23 therefore granted.

24 With respect to the request for stay pending
25 appeal, that motion is denied for the following reasons. As

1 the parties are aware and have briefed, there are four
2 primary criteria that the Court is to consider in granting
3 or denying the motion for a stay pending appeal. And as the
4 parties are aware by virtue of my ruling made earlier today,
5 the judgment vesting title to 2 River Terrace, the
6 liquidating Trustee, is now a final judgment, so the Court
7 is treating this as a request for a stay pending appeal of a
8 final judgment in accordance with the bankruptcy rules.

9 The criteria, and I'll go through them one at a
10 time rather than state all four at the top, the first being
11 that the movant, here 2 River Terrace, now the former owner
12 of the unit, have demonstrated it will suffer irreparable
13 injury absent a stay. The Court notes that this element was
14 not satisfied.

15 First, there's no evidence in the record from the
16 movant, 2 River Terrace. There's just no evidence in the
17 record at all as to how, why it might suffer any injury,
18 much less irreparable injury. There's no supporting
19 affidavit from Mr. Parmar or anyone else on behalf of 2
20 River Terrace. So, while the Court has before it arguments
21 of counsel, while eloquent, they're not supported by any
22 evidence from the movant on the motion for a stay.

23 With respect, though, further to the irreparable
24 injury element, the record before the Court is that no one
25 has been living in this unit for what I'll define as quite

1 some time, whether it's two years or three years. It is
2 quite some time in the life of this unit.

3 While the movant defendant has argued that, well,
4 there was some period of time during which we were not
5 allowed into the unit, and that is controverted by the condo
6 board, there was no evidence before the Court that in fact
7 access to the unit was denied.

8 What's clear on the record is that for a
9 substantial period of time, three years or longer, the prior
10 owner of the unit failed to pay what are in relative terms
11 modest carrying costs for the unit, maintenance, taxes, and
12 electricity charges that resulted in a substantial judgment
13 being entered in favor of the condo board in September of
14 2019.

15 Those monthly charges were not paid before
16 September of 2019 and were not paid after 2019. And so, to
17 argue that the movant has a -- will suffer substantial
18 injury if the property is allowed to be sold by the bankrupt
19 -- by the liquidating Trustee somewhat misses the mark,
20 because this property has been in jeopardy of being sold by
21 the condominium board under a valid on-its-face state court
22 judgment for well over a year and a half, and the reason
23 that the prior owner was in that jeopardy was because it
24 failed to pay what were relatively modest -- in relation to
25 the value of the unit relatively modest monthly carrying

1 charges.

2 The argument essentially that, well, Judge, we
3 didn't pay those because we weren't sure who we might lose
4 the unit to, we might have lost it to a sheriff's sale for
5 the condo board, we might have lost it to the Department of
6 Justice incident, or ancillary to a criminal prosecution or
7 investigation, and we might have lost it to the bankruptcy
8 estate because there's been a -- in effect a seizure
9 (indiscernible) the property in effect now for over two
10 years, that really is contrary to demonstrating irreparable
11 injury through the loss of the property were a stay not --
12 were not granted, now the property is allowed to be sold.

13 With respect to the second element, whether or not
14 the liquidating Trustee, the plaintiff in the adversary
15 proceeding, would suffer substantial injury if a stay were
16 to be issued, the liquidating Trustee is also facing the
17 potential sheriff's sale of this unit by the condominium
18 board. That judgment remains outstanding and unpaid and
19 there's no stay in effect of that judgment being executed
20 other than voluntary agreements not to proceed that it
21 agreed to from time to time between the condo board and the
22 liquidating Trustee.

23 The liquidating Trustee has been incurring and
24 paying now on a current basis since March of this year
25 approximately \$7,500 per month of carrying charges on the

1 condominium board. Every month that those payments are
2 made, it prejudices the creditors of the bankruptcy estate
3 because that is money that the creditors can then not
4 recover and enjoy in accordance with the confirmed plan of
5 reorganization.

6 Were the property not allowed to be sold now by a
7 stay being granted, the liquidating Trustee would continue
8 to incur and need to pay those monthly charges, again as
9 well as facing the potential loss to a sheriff's sale under
10 the state court judgment.

11 With respect to the demonstration of a substantial
12 possibility of success on appeal, the Court agrees with the
13 liquidating Trustee that that is the most significant
14 factor. I will not go back into the extensive ruling that
15 the Court made in granting the summary judgment. That
16 stands on the record of this adversary proceeding.

17 There's been no demonstration, though, to this
18 Court's satisfaction that clear error was made or
19 substantial error was made by this Court in either its
20 factual determinations as far as those facts as to which no
21 material issue of fact existed or as to its application of
22 the prevailing law to the undisputed material facts.

23 Finally, with respect to the public interest, that
24 does not favor granting a stay pending appeal. As the
25 parties are aware and as the Court's bench ruling on

1 granting the -- what was previously the partial summary
2 judgment would evidence, the very existence of 2 River
3 Terrance and its obtaining title to this property was the
4 result of a substantial fraudulent transfer made by one or
5 more of the Debtors.

6 That 2 River Terrance didn't pay for this
7 property, never did, hasn't been by it, didn't put the money
8 down for it, and now for some three years or so hasn't even
9 been paying the monthly carrying charges, those type of
10 facts do not weigh in favor of granting a stay because of
11 the nature of the public interests involved. That's without
12 considering the impact that the stay on that element might
13 have on the creditors of the estate, again who will not be
14 paid from the proceeds of this sale if the sale were not
15 allowed to go forward.

16 While the motion for stay is being denied, the
17 Court thought it would be helpful to also address were a
18 stay to have been granted what bond conditions would be
19 imposed by the Court in the event that this matter is taken
20 the district court and should the district court have a
21 different view on the Court's ruling, which is certainly
22 fine and appropriate. The Court believes it would be
23 helpful to inform the parties as to what the Court would
24 consider to be an appropriate bond for a stay pending
25 appeal. I discussed these in part during the colloquy with

1 the parties, but I'll memorialize it as part of the Court's
2 ruling.

3 The first condition in a stay pending appeal would
4 be the payment -- immediate payment of the state court
5 judgment which threatens the ownership of the property now
6 in the liquidating Trustee's estate. That judgment, whether
7 it's 470,000 or \$500,000, the precise amount can be readily
8 calculated by the condominium board and notice of that
9 amount provided to the parties at interest. But the first
10 (indiscernible) stay pending appeal was that judgment has to
11 be paid in full, period, full stop within 14 days.

12 Part two of the stay pending appeal conditions
13 would be that a \$5 million bond would need to be posted.
14 The sale price is \$4.8 million. We all know that. That's
15 clear from the record.

16 Were a stay to be granted, it would be for a
17 period of one year to allow the appeal to move forward
18 before the district court. The \$5 million figure is then
19 the \$4.8 million sale price plus a five percent interest
20 factor for the period of one year that the stay would remain
21 in effect.

22 The Court recognizes that that may approximate the
23 amount that creditors are being delayed from receiving under
24 the confirmed plan. It's also a factor of the amount of
25 continuing charges that the liquidating Trustee would have

1 to be paid of the approximate \$7,500 a month while the
2 property was not being sold. So, then condition two would
3 be a \$5 million bond posted that would have to be posted
4 within 14 days fully in cash or fully (indiscernible).

5 The third aspect of any stay pending appeal is
6 that that stay would remain in effect for a period of one
7 year and at the end of the one year period. The Court would
8 revisit the bond amount were the appeal not determined that
9 one year period to determine whether or not those two bond
10 conditions remained adequate to protect the estate's
11 interest.

12 Theoretically, condition one wouldn't moot it out,
13 because the state court judgment would have been fully paid
14 and the Court would then need to determine whether or not
15 the \$5 million bond remains adequate.

16 But again, those are the conditions under which
17 the Court would have imposed a bond were it to have granted
18 the motion for a stay pending appeal, but again, the motion
19 for the reasons set out on the record have been denied.

20 I'm going to direct that the liquidating Trustee
21 submit both an order approving the sale motion in the main
22 case as well as a final judgment in the adversary proceeding
23 consistent with my ruling earlier today and a proposed form
24 of order denying the stay pending appeal.

25 All right. Any other issues for housekeeping

1 purposes that the parties wish to address? And let me
2 advise Ms. Hadden, it may be a couple -- few days before an
3 order is entered on the denial of the stay pending appeal
4 and the procedural order severing out the other claims in
5 the adversary proceeding.

6 I am noting on the record that the Court has now
7 fully ruled on both the finality of the judgment vesting
8 title in the bankruptcy Trustee, the plan Trustee, and the
9 denial of the stay pending appeal. To the extent that your
10 client wishes to seek district court review, you can
11 certainly report to the district court, but the Court made
12 the ruling on the record. The calendar is so ordered with
13 the Court's ruling today so that your client is not
14 inhibited by the delay of a couple or few days in seeking
15 district court review of this Court's order should 2 River
16 Terrance wish to (indiscernible). I did want that to be
17 part of the record as well.

18 MS. HADDEN: Thank you, Your Honor. That was
19 actually the one housekeeping question that I was going to
20 raise, was whether or not the Court would require us to wait
21 until the written decision was issued. So, thank you, I
22 appreciate that.

23 THE COURT: I do not (indiscernible) a report to
24 the district court that the ruling was rendered fully on the
25 record this afternoon.

1 MS. HADDEN: Thank you.

2 MR. SCHARF: Your Honor, Ilan Scharf for the
3 liquidating Trustee. Just in terms of housekeeping and
4 understanding the kind of order we're going to submit, we
5 respect the decision that renders this part of the complaint
6 a final judgment. I believe Your Honor had said we're going
7 to get a separate adversary proceeding number for the -- is
8 that going to be for the new claims? Or sorry, for the
9 claims that are severed out or the claim that's being
10 finalized?

11 THE COURT: The judgment that has now been
12 rendered final will remain under the original adversary
13 number. That's just easier for a number of administrative
14 and (indiscernible) issues. The unresolved claim would be
15 severed into a new adversary proceeding. So, the judgment
16 that you all need to submit is simply a final judgment on
17 the relief that was already granted in favor of the
18 liquidating Trustee.

19 The Court will enter its own procedural order
20 severing the remaining (indiscernible).

21 MR. SCHARF: Okay. Will the Court's procedural
22 order dictate, you know, that the pleadings don't need to be
23 refiled or just to the extent, you know, answers don't need
24 to be refiled, things like that?

25 THE COURT: It's fine. I mean, if you all want to

1 submit a proposed form of severance order, that's certainly
2 fine, but the contemplation of the Court is that everything
3 as it existed at 2:00 this afternoon in that adversary
4 proceeding that had not yet been resolved is moving over
5 into a new adversary proceeding by number only but nothing
6 else is changed.

7 MR. SCHARF: Thank you, Your Honor.

8 THE COURT: And then on the order denying the
9 motion for stay pending appeal, that can be a plain, vanilla
10 order for the reasons stated on the record. The motion is
11 denied. You may include, if you wish, that had a stay been
12 granted, what the bond terms would have been, mainly for
13 ease of the district court should that become an issue if
14 the district court would want to be informed of the order as
15 opposed to the ruling itself.

16 All right? Anything further?

17 MR. NOLAN: Thank you, Your Honor. I'm just slow
18 on the draw with the mute button.

19 MR. PITTINSKY: Thank you, Judge.

20 MR. SCHARF: Thank you, Your Honor.

21 THE COURT: All right. Thank you all. That will
22 then conclude --

23 MS. HADDEN: Thank you.

24 THE COURT: -- this afternoon's proceedings in 20-
25 8051 and 18-71748. The Court will be in recess. We're off

1 the record.

2 MR. PITTINSKY: Your Honor, before you go off the
3 record, I just want to note that I didn't note my appearance
4 at the beginning of the calendar call, but I assume at this
5 point my appearance is noted for whatever necessary on
6 behalf of the condo.

7 THE COURT: (indiscernible) just state fully the
8 name of your client. That's the only thing that we don't
9 have on the record.

10 MR. PITTINSKY: So, it's the Board of Managers of
11 the Riverhouse One Condominium by Rosenberg & Pittinsky, its
12 counsel.

13 THE COURT: Very well. All right. Thank you all.
14 The Court will be in recess.

15 (Whereupon these proceedings were concluded)
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I N D E X

RULINGS

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Motion to Sell Property Granted

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Motion for Stay Denied

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya
Ledanski Hyde

Digitally signed by Sonya Ledanski
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Sonya Ledanski Hyde

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Date: June 23, 2021

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